physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title X, §1006, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VII, §703, 53 Stat. 1398; Aug. 28, 1950, ch. 809, title III, pt. 4, §343(a), 64 Stat. 554; Pub. L. 87–543, title I, §156(c), July 25, 1962, 76 Stat. 207; Pub. L. 89–97, title II, §221(b), title IV, §402(c), July 30, 1965, 79 Stat. 358, 416; Pub. L. 92–603, title IV, §§ 408(b), 409(b), Oct. 30, 1972, 86 Stat. 1490; Pub. L. 97–35, title XXI, §2184(c)(3), Aug. 13, 1981, 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) '', or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of,'' after ''money payments to''.

1972—Pub. L. 92–603 authorized the State, at its option, to include within term ''aid to the blind'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of ''aid to the blind'' the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of ''aid to the blind'' to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted ''(if provided in or after the third month before the month in which the recipient makes application for aid)'' before ''medical care''.

1950—Act Aug. 28, 1950, redefined ''aid to the blind''.

1939—Act Aug. 10, 1939, redefined ''aid to the blind'' to include those individuals who are needy.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(b) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Amendment by section 402(c) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 156(c) of Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, title III, §343(b), 64 Stat. 554, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in [former] clause (a) or (b) of section 1006 of the Social Security Act [42 U.S.C. 1206] as so amended shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.''

SUBCHAPTER XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term ''State'', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters IV, V, VII, XI, XIX, and XXI of this chapter includes the Virgin Islands and Guam. Such term when used in

[1] So in original. Probably should be ''needs''.

subchapters III, IX, and XII of this chapter also includes the Virgin Islands. Such term when used in subchapter V and in part B of this subchapter of this chapter also includes American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Such term when used in subchapters XIX and XXI of this chapter also includes the Northern Mariana Islands and American Samoa. In the case of Puerto Rico, the Virgin Islands, and Guam, subchapters I, X, and XIV, and subchapter XVI of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972) shall continue to apply, and the term ''State'' when used in such subchapters (but not in subchapter XVI of this chapter as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam. Such term when used in subchapter XX of this chapter also includes the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Such term when used in subchapter IV of this chapter also includes American Samoa.

(2) The term ''United States'' when used in a geographical sense means, except where otherwise provided, the States.

(3) The term ''person'' means an individual, a trust or estate, a partnership, or a corporation.

(4) The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(5) The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(6) The term ''Secretary'', except when the context otherwise requires, means the Secretary of Health and Human Services.

(7) The terms ''physician'' and ''medical care'' and ''hospitalization'' include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The ''Federal percentage'' for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term ''United States'' means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the ''United States''. Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term ''shared health facility'' means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters XVIII and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1986, or any public entity.

(10) The term ''Administration'' means the Social Security Administration, except where the context requires otherwise.

(b) The terms ''includes'' and ''including'' when used in a definition contained in this chap-

ter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this chapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this chapter shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

(Aug. 14, 1935, ch. 531, title XI, §1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, §801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, §401(a), 60 Stat. 986; June 14, 1948, ch. 468, §2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, §403(a)(1), (2), (b), 64 Stat. 559; Aug. 1, 1956, ch. 836, title III, §333, 70 Stat. 852; Pub. L. 85–840, title V, §§505, 506, Aug. 28, 1958, 72 Stat. 1050, 1051; Pub. L. 86–70, §32(a), (d), June 25, 1959, 73 Stat. 149; Pub. L. 86–624, §30(a), (d), July 12, 1960, 74 Stat. 419, 420; Pub. L. 86–778, title V, §541, Sept. 13, 1960, 74 Stat. 985; Pub. L. 87–543, title I, §153, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title I, §121(c)(1), July 30, 1965, 79 Stat. 352; Pub. L. 92–603, title II, §272(a), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–233, §18(z–2)(1)(A), Dec. 31, 1973, 87 Stat. 973; Pub. L. 94–273, §22, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94–566, title I, §116(a), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–142, §5(c)(2), (*l*)(2), Oct. 25, 1977, 91 Stat. 1184, 1191; Pub. L. 97–35, title XXI, §§2162(a)(1), 2193(c)(2), title XXIII, §2352(b), Aug. 13, 1981, 95 Stat. 806, 827, 871; Pub. L. 97–248, title I, §§136(a), 160(c), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title VI, §2663(e)(1), (j)(1), July 18, 1984, 98 Stat. 1167, 1170; Pub. L. 99–272, title IX, §9528(a), Apr. 7, 1986, 100 Stat. 219; Pub. L. 99–514, §2, title XVIII, §§1883(c)(1), 1895(c)(6), Oct. 22, 1986, 100 Stat. 2095, 2918, 2936; Pub. L. 100–203, title IX, §9135(a)(1), (b)(1), Dec. 22, 1987, 101 Stat. 1330–315; Pub. L. 100–485, title VI, §601(a), Oct. 13, 1988, 102 Stat. 2407; Pub. L. 103–296, title I, §108(b)(1), Aug. 15, 1994, 108 Stat. 1481; Pub. L. 105–33, title IV, §4901(b)(1), Aug. 5, 1997, 111 Stat. 570.)

REFERENCES IN TEXT

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–33 substituted ''XIX, and XXI'' for ''and XIX'' and ''subchapters XIX and XXI'' for ''subchapter XIX''.

1994—Subsec. (a)(10). Pub. L. 103–296 added par. (10).

1988—Subsec. (a)(1). Pub. L. 100–485 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1987—Subsec. (a)(1). Pub. L. 100–203, §9135(a)(1), inserted ''American Samoa,'' after ''Guam,''.

Pub. L. 100–203, §9135(b)(1), inserted at end ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1986—Subsec. (a)(3) to (5). Pub. L. 99–514, §1883(c)(1), realigned margins of pars. (3) to (5).

Subsec. (a)(8)(B). Pub. L. 99–514, §1895(c)(6), amended directory language of Pub. L. 99–272, §9528(a), and did not involve any change in text. See note below.

Pub. L. 99–272, §9528(a), as amended by Pub. L. 99–514, §1895(c)(6), struck out ''even-numbered'' after ''November 30 of each'' and substituted ''for each of the four quarters'' for ''for each of the eight quarters''.

Subsec. (a)(9). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in closing provisions.

1984—Subsec. (a)(6). Pub. L. 98–369, §2663(j)(1), substituted ''means the Secretary of Health and Human Services'' for ''means the Secretary of Health, Education, and Welfare''.

Subsec. (a)(8), (9). Pub. L. 98–369, §2663(e)(1), realigned margins of pars. (8) and (9).

1982—Subsec. (a)(1). Pub. L. 97–248, §136(a), inserted ''and American Samoa'' after ''includes the Northern Mariana Islands''.

Pub. L. 97–248, §160(c), substituted ''Guam, and the Northern Mariana Islands'' for ''American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

1981—Subsec. (a)(1). Pub. L. 97–35, §§2162(a)(1), 2352(b), substituted ''American Samoa, the Northern Mariana Islands, and'' for ''American Samoa and'' and inserted provisions that ''State'' when used in subchapter XIX of this chapter also includes the Northern Mariana Islands and when used in subchapter XX of this chapter also includes the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (a)(9)(D). Pub. L. 97–35, §2193(c)(2), substituted ''subchapters XVIII, and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1977—Subsec. (a)(1). Pub. L. 95–142, §5(*l*)(2), which directed that second sentence of par. (1) be amended by inserting provision that ''State'' when used in part B of this subchapter also includes American Samoa and the Trust Territory of the Pacific Islands, was executed by inserting that provision to third sentence.

Subsec. (a)(9). Pub. L. 95–142, §5(c)(2), added par. (9).

1976—Subsec. (a)(1). Pub. L. 94–566 inserted provision that ''State'', when used in subchapters III, IX, and XII of this chapter, also includes the Virgin Islands.

Subsec. (a)(8)(B). Pub. L. 94–273 substituted ''October'' for ''July'' in two places and ''November 30'' for ''August 31''.

1973—Subsec. (a)(1). Pub. L. 93–233 struck out in first sentence references to subchapters I, X, XIV, and XVI of this chapter and inserted third sentence respecting the case of Puerto Rico, the Virgin Islands, and Guam.

1972—Subsec. (a)(1). Pub. L. 92–603 extended benefits of subchapter V of this chapter to American Samoa and the Trust Territory of the Pacific Islands.

1965—Subsec. (a)(1). Pub. L. 89–97 included subchapter XIX of this chapter.

1962—Subsec. (a)(1). Pub. L. 87–543, §153(a), included in enumeration subchapters XI and XVI of this chapter.

Subsec. (a)(2). Pub. L. 87–543, §153(b), struck out '', the District of Columbia, and the Commonwealth of Puerto Rico'' after ''the States,''.

1960—Subsec. (a)(1). Pub. L. 86–778 substituted ''The term 'State', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico'' for ''The term 'State' includes Hawaii, and the District of Columbia'', and ''includes the Virgin Islands and Guam'' for ''includes Puerto Rico, the Virgin Islands, and Guam''.

Pub. L. 86–624, §30(d)(1), struck out ''Hawaii, and'' before ''the District of Columbia''.

Subsec. (a)(2). Pub. L. 86–778 substituted ''means, except where otherwise provided, the States, the District of Columbia, and the Commonwealth of Puerto Rico'' for ''means the States, Hawaii, and the District of Columbia''.

Pub. L. 86–624, § 30(d)(2), struck out '', Hawaii,'' before ''and the District of Columbia''.

Subsec. (a)(8)(A). Pub. L. 86–624, § 30(a)(1), (2), substituted ''per capita income of the United States'' for ''per capita income of the continental United States (including Alaska)'', and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

Subsec. (a)(8)(B). Pub. L. 86–624, § 30(a)(1), substituted ''United States'' for ''continental United States (including Alaska)''.

Subsec. (a)(8)(C), (D). Pub. L. 86–624, § 30(a)(3), added subpars. (C) and (D).

1959—Subsec. (a)(1). Pub. L. 86–70, § 32(d)(1), substituted ''Hawaii and'' for ''Alaska, Hawaii, and''.

Subsec. (a)(2). Pub. L. 86–70, § 32(d)(2), struck out ''Alaska,'' before ''Hawaii''.

Subsec. (a)(8). Pub. L. 86–70, § 32(a), substituted ''(including Alaska)'' for ''(excluding Alaska)'' in two places, and ''50 per centum for Hawaii'' for ''50 per centum for Alaska and Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, § 506, included Guam within definition of ''State'' when used in subchapters I, IV, V, VII, X, and XIV of this chapter.

Subsec. (a)(8). Pub. L. 85–840, § 505, added par. (8).

1956—Subsec. (a)(1). Act Aug. 1, 1956, inserted reference to subchapter VII of this chapter.

1950—Subsec. (a)(1). Act Aug. 28, 1950, § 403(a)(1), redefined ''State''.

Subsec. (a)(6). Act Aug. 28, 1950, § 403(a)(2), defined ''Administrator''.

Subsec. (a)(7). Act Aug. 28, 1950, § 403(b), added par. (7).

1948—Subsec. (a)(6). Act June 14, 1948, provided for application of usual common-law rules in determining whether a person is an employee.

1946—Subsec. (a)(1). Act Aug. 10, 1946, struck out exception of section 45b of title 29 and inserted reference to Virgin Islands.

1939—Subsec. (a)(1). Act Aug. 10, 1939, redefined ''State''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–485, title VI, § 601(d), Oct. 13, 1988, 102 Stat. 2408, provided that: ''The amendments made by this section [amending this section and sections 603, 1308, and 1318 of this title] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 623 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1883(c)(1) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(c)(6) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Pub. L. 99–272, title IX, § 9528(b), (c), Apr. 7, 1986, 100 Stat. 219, as amended by Pub. L. 99–509, title IX, §§ 9102, 9421(a), Oct. 21, 1986, 100 Stat. 1972, 2065, provided that:

''(b) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act [42 U.S.C. 1301(a)(8)(B)] relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act [Apr. 7, 1986].

''(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act [42 U.S.C. 603, 1396b], the amendments made by subsection (a) [amending this section] shall not apply to a State with respect to either such section if the effect of the [sic] applying the amendments would be to reduce the amount of payment made to the State under that section.''

[Pub. L. 99–509, title IX, § 9102, Oct. 21, 1986, 100 Stat. 1972, provided that the amendment made by that section [amending section 9528(c) of Pub. L. 99–272, set out above] is effective as provided in section 9421(b) of Pub. L. 99–509. See below.]

[Pub. L. 99–509, title IX, § 9421(b), Oct. 21, 1986, 100 Stat. 2065, provided that: ''The amendment made by subsection (a) [enacting section 9528(c) of Pub. L. 99–272, set out above] shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272] at the time of its enactment.'']

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.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97–248, title I, § 136(e), Sept. 3, 1982, 96 Stat. 376, provided that: ''The amendments made by this section [amending this section and sections 1308, 1396a, and 1396d of this title] shall become effective on October 1, 1982.''

Pub. L. 97–248, title I, § 160(e), Sept. 3, 1982, 96 Stat. 400, provided that: ''The amendments made by this section [amending this section and sections 671, 1308, and 1397b of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2352(a) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of Title 26, Internal Revenue Code, an unemployment compensation law submitted to him by the Virgin Islands for approval, see section 116(f)(1) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–233, § 18(z–2)(2), Dec. 31, 1973, 87 Stat. 974, provided that: ''The amendments made by this subsection [amending this section and sections 1315 and 1316 of this title] shall be effective on and after January 1, 1974.''

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title II, § 272(c), Oct. 30, 1972, 86 Stat. 1451, provided that: ''The amendments made by this section [amending this section and section 1308 of this title] shall apply with respect to fiscal years beginning after June 30, 1971.''

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–97, title I, § 121(c)(1), July 30, 1965, 79 Stat. 352, provided that the amendment made by that section is effective Jan. 1, 1966.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title V, § 541, Sept. 13, 1960, 74 Stat. 985, provided that the amendment made by that section is effective on and after Jan. 1, 1961.

Amendment by section 30(d) of Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

Amendment by section 30(a)(1) of Pub. L. 86–624 applicable in the case of promulgations or computations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see Pub. L. 86–624, § 47(a), July 12, 1960, 74 Stat. 423.

Pub. L. 86–624, § 47(b), July 12, 1960, 74 Stat. 423, provided that: ''The amendments made by paragraph (2) of section 30(a) [amending this section] shall be effective with the beginning of the calendar quarter in which this Act is enacted. The Secretary of Health, Education, and Welfare [now Health and Human Services] shall, as soon as possible after enactment of this Act [July 12, 1960], promulgate a Federal percentage for Hawaii determined in accordance with the provisions of subparagraph (B) of section 1101(a)(8) of the Social Security Act [42 U.S.C. 1301(a)(8)(B)], such promulgation to be effective for the period beginning with the beginning of the calendar quarter in which this Act is enacted and ending with the close of June 30, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 32(a) of Pub. L. 86–70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, and amendment by section 32(d) of Pub. L. 86–70 effective Jan. 3, 1959, see Pub. L. 86–70, § 47(a), (d), June 25, 1959, 73 Stat. 153.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, title IV, § 403(a)(3), 64 Stat. 559, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect October 1, 1950, and the amendment made by paragraph (2) of this subsection [amending this section], insofar as it repeals the definition of 'employee', shall be effective only with respect to services performed after 1950.''

Act Aug. 28, 1950, ch. 809, title IV, § 403(b), 64 Stat. 559, provided that the amendment made by that section is effective Oct. 1, 1950.

EFFECTIVE DATE OF 1948 AMENDMENT

Act June 14, 1948, ch. 468, § 2(b), 62 Stat. 438, provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if included in the Social Security Act [42 U.S.C. 301 et seq.] on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any (1) wage credits reported to the Bureau of Internal Revenue [now Internal Revenue Service] with respect to services performed prior to the enactment of this Act [June 14, 1948] or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act in the case of individuals who have attained age sixty-five or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935.''

EFFECTIVE DATE OF 1946 AMENDMENT

Act Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986, provided that the amendment made by that section is effective Jan. 1, 1947.

EFFECTIVE DATE OF 1939 AMENDMENT

Act Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS

The provisions of subsecs. (a)(1), (3), (6), (c) of this section were incorporated into sections 1426(d) to (f), 1427, 1607(i) to (k), and 1608 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of former Title 26.

Provisions of the Internal Revenue Code of 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said repealed sections are covered by sections 3121, 3123, 3306, 3307, 7701 of Title 26.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Pub. L. 98–369, div. B, title VI, § 2663(*l*), July 18, 1984, 98 Stat. 1171, provided that: ''Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [[42 U.S.C. 401 et seq., 601 et seq., 901 et seq., 1301 et seq.] (other than section 1101(a)(6) of such Act [42 U.S.C. 1301(a)(6)]) is amended—

''(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrator's', where the reference is to that term alone;

''(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L.

98–369, § 2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

''(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [42 U.S.C. 602(a)(5)] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91–648 [42 U.S.C. 4728(a)(3)(D)].''

DEFINITIONS OF ''BIPA'' AND ''SECRETARY''

Pub. L. 108–173, § 1(c), Dec. 8, 2003, 117 Stat. 2066, provided that:

''In this Act [see Short Title of 2003 Amendments note set out under section 1305 of this title]:

''(1) BIPA.—The term 'BIPA' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554 [see Tables for classification].

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''

DEFINITION OF ''SECRETARY''

Pub. L. 90–248, title IV, § 404, Jan. 2, 1968, 81 Stat. 933, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [see Short Title of 1968 Amendment note set out under section 1305 of this title] (unless the context otherwise requires), the term 'Secretary' means the Secretary of Health and Human Services.''

Pub. L. 89–97, title I, § 110, July 30, 1965, 79 Stat. 340, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act, and in the provisions of the Social Security Act amended by this Act [see Short Title of 1965 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Pub. L. 88–156, § 6, Oct. 24, 1963, 77 Stat. 276, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments to the Social Security Act made by this Act [see Short Title of 1963 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Pub. L. 87–543, title II, § 201, July 25, 1962, 76 Stat. 208, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act amended by this Act [see Short Title of 1962 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Pub. L. 87–64, title III, § 304, June 30, 1961, 75 Stat. 143, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this title and title I, and in the provisions of the Social Security Act amended thereby [see Short Title of 1961 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Pub. L. 86–778, title VII, § 709, Sept. 13, 1960, 74 Stat. 997, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and the provisions of the Social Security Act amended by this Act [see Short Title of 1960 Amendment note set out under section 1305 of this title] the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Pub. L. 85–840, title VII, § 702, Aug. 28, 1958, 72 Stat. 1056, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this Act [see Short Title of 1958 Amendment note set out under section 1305 of this title], the term ''Secretary'', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Act Aug. 1, 1956, ch. 836, title I, § 119, 70 Stat. 836, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act set forth in this Act [see Short Title of 1956 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Act Sept. 1, 1954, ch. 1206, title I, § 114, 68 Stat. 1087, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this title [42 U.S.C. 402, 403, 415, 421], the term 'Secretary' means the Secretary of Health and Human Services.''

§ 1301–1. Omitted

CODIFICATION

Section, act Aug. 10, 1946, ch. 951, title II, § 202, 60 Stat. 981, defined the term ''Administrator'' as used in certain sections of this chapter. See section 1301 of this title.

§ 1301a. Omitted

CODIFICATION

Section, act June 26, 1940, ch. 428, title II, 54 Stat. 588, provided for reimbursement for official travel performed by employees of the Bureau of Old-Age Insurance, was from the Federal Security Agency Appropriation Act, 1941, and was not repeated in subsequent appropriations acts.

§ 1302. Rules and regulations; impact analyses of Medicare and Medicaid rules and regulations on small rural hospitals

(a) The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under subchapter XVIII of this chapter, subchapter XIX of this chapter, or part B of this subchapter that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5 to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is

required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5 to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

(3) If a regulatory flexibility analysis is required by chapter 6 of title 5 for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

(Aug. 14, 1935, ch. 531, title XI, §1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, §403(c), 64 Stat. 559; Pub. L. 98–369, div. B, title VI, §2663(j)(2)(D)(i), (*l*)(2), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 100–203, title IV, §4402(a), Dec. 22, 1987, 101 Stat. 1330–226.)

AMENDMENTS

1987—Pub. L. 100–203 designated existing provision as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–369, §2663(*l*)(2), substituted ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator'' immediately prior to the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' by Pub. L. 98–369, §2663(j)(2)(D)(i).

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, §4402(b), Dec. 22, 1987, 101 Stat. 1330–226, provided that: ''The amendments made by paragraph (1) [probably means subsec. (a), amending this section] shall apply to regulations proposed more than 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

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.

REPEALS

The provisions of this section were incorporated into sections 1429 and 1609 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, which enacted Title 26, I.R.C. 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954. See also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095. The repealed sections are covered by section 7805(a), (c) of Title 26.

ABORTION SERVICES; PROHIBITION ON CERTAIN POLICY CHANGES

Pub. L. 100–517, §9, Oct. 24, 1988, 102 Stat. 2583, provided that: ''With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, interpretations, or practices in effect on the date of the enactment of this Act [Oct. 24, 1988].''

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98–473, title II, §1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

''(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

''(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984].''

§ 1303. Separability

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

(Aug. 14, 1935, ch. 531, title XI, §1103, 49 Stat. 648.)

SEPARABILITY

Pub. L. 98–460, §18, Oct. 9, 1984, 98 Stat. 1813, provided that: ''If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 1304. Reservation of right to amend or repeal

The right to alter, amend, or repeal any provision of this chapter is hereby reserved to the Congress.

(Aug. 14, 1935, ch. 531, title XI, §1104, 49 Stat. 648.)

§ 1305. Short title of chapter

This chapter may be cited as the ''Social Security Act''.

(Aug. 14, 1935, ch. 531, title XI, §1105, 49 Stat. 648.)

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–115, §1, Dec. 28, 2015, 129 Stat. 3131, provided that: ''This Act [amending sections 1320a–7b, 1395w–4, 1395kk–1, 1395ww, 1395ddd, 1395iii, and 1396u–6 of this title and enacting provisions set out as notes under sections 1395w–4, 1395kk–1, and 1395ddd of this title] may be cited as the 'Patient Access and Medicare Protection Act'.''

Pub. L. 114–106, §1, Dec. 18, 2015, 129 Stat. 2222, provided that: ''This Act [amending section 1395w–23 of this title] may be cited as the 'Securing Fairness in Regulatory Timing Act of 2015'.''

Pub. L. 114–97, §1, Dec. 11, 2015, 129 Stat. 2194, provided that: ''This Act [enacting and amending provisions set

out as notes under section 1396a of this title] may be cited as the 'Improving Access to Emergency Psychiatric Care Act'.''

Pub. L. 114–74, title VIII, §801, Nov. 2, 2015, 129 Stat. 601, provided that: ''This title [enacting sections 1320a–6a and 1320e–3 of this title, amending sections 401, 402, 404, 405, 408, 417, 421 to 423, 425 to 426–1, 434, 904, 1011, 1320a–8, 1320b–10, 1383, and 1383a of this title and section 901 of Title 2, The Congress, and enacting provisions set out as notes under sections 401, 402, 404, 421, 423, 425, 904, 1320a–6a, and 1320e–3 of this title] may be cited as the 'Social Security Benefit Protection and Opportunity Enhancement Act of 2015'.''

Pub. L. 114–63, §1, Oct. 7, 2015, 129 Stat. 549, provided that: ''This Act [amending sections 1382a, 1382b, and 1396a of this title, enacting provisions set out as a note under section 1382a of this title, amending provisions set out as notes under this section and section 1382a of this title, and repealing provisions set out as a note under section 1382a of this title] may be cited as the 'Ensuring Access to Clinical Trials Act of 2015'.''

Pub. L. 114–42, §1, Aug. 6, 2015, 129 Stat. 468, provided that: ''This Act [amending section 1395cc of this title] may be cited as the 'Notice of Observation Treatment and Implication for Care Eligibility Act' or the 'NOTICE Act'.''

Pub. L. 114–40, §1, July 30, 2015, 129 Stat. 441, provided that: ''This Act [amending sections 1395m and 1395x of this title and enacting provisions set out as a note under section 1395x of this title] may be cited as the 'Steve Gleason Act of 2015'.''

Pub. L. 114–39, §1, July 30, 2015, 129 Stat. 440, provided that: ''This Act [amending section 1395cc–5 of this title] may be cited as the 'Medicare Independence at Home Medical Practice Demonstration Improvement Act of 2015'.''

Pub. L. 114–10, §1(a), Apr. 16, 2015, 129 Stat. 87, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Access and CHIP Reauthorization Act of 2015'.''

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–270, §1, Dec. 18, 2014, 128 Stat. 2948, provided that: ''This Act [amending section 402 of this title and enacting provisions set out as notes under section 402 of this title] may be cited as the 'No Social Security for Nazis Act'.''

Pub. L. 113–185, §1, Oct. 6, 2014, 128 Stat. 1952, provided that: ''This Act [enacting section 1395*lll* of this title, amending sections 1395f, 1395i–3, 1395x, 1395pp, 1395ww, 1395yy, 1395fff, and 1395iii of this title, and enacting provisions set out as a note under section 1395*lll* of this title] may be cited as the 'Improving Medicare Post-Acute Care Transformation Act of 2014' or the 'IMPACT Act of 2014'.''

Pub. L. 113–183, §1, Sept. 29, 2014, 128 Stat. 1919, provided that: ''This Act [see Tables for classification] may be cited as the 'Preventing Sex Trafficking and Strengthening Families Act'.''

Pub. L. 113–93, §1(a), Apr. 1, 2014, 128 Stat. 1040, provided that: ''This Act [see Tables for classification] may be cited as the 'Protecting Access to Medicare Act of 2014'.''

SHORT TITLE OF 2013 AMENDMENT

Pub. L. 113–67, div. B, §1001(a), Dec. 26, 2013, 127 Stat. 1195, provided that: ''This division [amending sections 701, 1395*l*, 1395m, 1395w–4, 1395w–28, 1395mm, 1395ww, 1395aaa, 1396a, 1396r–4, 1396r–6, and 1396u–3 of this title and section 901a of Title 2, The Congress, enacting provisions set out as notes under sections 1395w–4, 1395ww, and 1396r–4 of this title, and amending provisions set out as notes under sections 1395b–3 and 1395ww of this title] may be cited as the 'Pathway for SGR Reform Act of 2013'.''

Pub. L. 112–275, §1, Jan. 14, 2013, 126 Stat. 2460, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Protect our Kids Act of 2012'.''

Pub. L. 112–242, §1, Jan. 10, 2013, 126 Stat. 2374, provided that: ''This Act [amending section 1395y of this title and enacting provisions set out as notes under sections 1395*l* and 1395y of this title] may be cited as the 'Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012'.''

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–96, title IV, §4001, Feb. 22, 2012, 126 Stat. 194, provided that: ''This title [amending sections 602 to 604, 607, 608, 609, 611, 612 to 614, 618, and 1308 of this title and enacting provisions set out as notes under sections 603 and 611 of this title] may be cited as the 'Welfare Integrity and Data Improvement Act'.''

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–35, §1, Sept. 30, 2011, 125 Stat. 384, provided that: ''This Act [amending section 609 of this title] may be cited as the 'Short-Term TANF Extension Act'.''

Pub. L. 112–34, §1, Sept. 30, 2011, 125 Stat. 369, provided that: ''This Act [enacting section 629m of this title, amending sections 622 to 625, 629a to 629c, 629f to 629h, 673, 675, 679b, and 1320a–9 of this title, and enacting provisions set out as notes under sections 622, 629h, and 629m of this title] may be cited as the 'Child and Family Services Improvement and Innovation Act'.''

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–318, §1, Dec. 18, 2010, 124 Stat. 3455, provided that: ''This Act [amending section 405 of this title and enacting provisions set out as notes under section 405 of this title] may be cited as the 'Social Security Number Protection Act of 2010'.''

Pub. L. 111–309, §1(a), Dec. 15, 2010, 124 Stat. 3285, provided that: ''This Act [amending sections 254c–2, 254c–3, 256b, 1395*l*, 1395m, 1395w–4, 1395ww, 1395iii, 1396a, 1396b, 1396r–6, 1396r–8, 1396u–3, 1397gg, and 1397jj of this title and section 36B of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 256b, 1305, 1395p, 1395ww, and 1396b of this title and section 36B of Title 26, and amending provisions set out as notes under sections 1395*l*, 1395m, 1395w–4, 1395ww, and 1397ee of this title] may be cited as the 'Medicare and Medicaid Extenders Act of 2010'.''

Pub. L. 111–291, §1(a), Dec. 8, 2010, 124 Stat. 3064, provided that: ''This Act [amending sections 603, 609, 611, and 653a of this title, section 58c of Title 19, Customs Duties, section 443c of Title 25, Indians, section 6402 of Title 26, Internal Revenue Code, and section 1105 of Title 31, Money and Finance, enacting provisions set out as notes under section 653a of this title, section 1675c of Title 19, section 6402 of Title 26, and sections 1101 and 1105 of Title 31, and amending provisions set out as a note under section 1101 of Title 31] may be cited as the 'Claims Resolution Act of 2010'.''

Pub. L. 111–286, §1, Nov. 30, 2010, 124 Stat. 3056, provided that: ''This Act [amending section 1395w–4 of this title] may be cited as the 'The [sic] Physician Payment and Therapy Relief Act of 2010'.''

Pub. L. 111–280, §1, Oct. 13, 2010, 124 Stat. 2903, provided that: ''This Act [amending sections 1320b–20 and 1320b–21 of this title and enacting provisions set out as a note under section 1320b–20 of this title] may be cited as the 'WIPA and PABSS Extension Act of 2010'.''

Pub. L. 111–255, §1, Oct. 5, 2010, 124 Stat. 2640, as amended by Pub. L. 111–255, §3(e), Oct. 5, 2010, 124 Stat. 2641; Pub. L. 114–63, §2, Oct. 7, 2015, 129 Stat. 549, provided that: ''This Act [amending sections 1382a, 1382b, and 1396a of this title, enacting provisions set out as notes under section 1382a of this title, and amending provisions set out as notes under sections 1382a, 1382b, and 1396a of this title] may be cited as the 'Improving Access to Clinical Trials Act of 2009'.''

[Section 3(e) of Pub. L. 111–255, formerly set out as an Effective and Termination Dates of 2010 Amendment note under section 1382a of this title, which repealed section 1 of Pub. L. 111–255, set out above, 5 years after Oct. 5, 2010, was itself repealed by Pub. L. 114–63, §2, Oct. 7, 2015, 129 Stat. 549, effective as if included in Pub. L. 111–255.]

Pub. L. 111–152, §1(a), Mar. 30, 2010, 124 Stat. 1029, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Care and Education Reconciliation Act of 2010'.''

Pub. L. 111–148, title VI, §6701, Mar. 23, 2010, 124 Stat. 782, provided that: ''This subtitle [subtitle H (§§6701–6703) of title VI of Pub. L. 111–148, enacting sections 1320b–25 and 1395i–3a of this title, designating subchapter XX of this chapter as division A of subchapter XX of this chapter and enacting division B of subchapter XX of this chapter, amending sections 602, 604, 622, 671 to 673, 1320a–7, 1320a–7a, 1397, 1397a, 1397c, 1397d, 1397e, and 1397g of this title, and enacting provisions set out as notes under sections 602 and 1395i–3a of this title] may be cited as the 'Elder Justice Act of 2009'.''

Pub. L. 111–142, §1, Feb. 27, 2010, 124 Stat. 38, provided that: ''This Act [amending sections 406 and 1383 of this title, enacting provisions set out as a note under section 406 of this title, and amending provisions set out as notes under sections 406 and 1383 of this title] may be cited as the 'Social Security Disability Applicants' Access to Professional Representation Act of 2010'.''

Pub. L. 111–127, §1, Jan. 27, 2010, 124 Stat. 4, provided that: ''This Act [amending sections 1313, 1396u–3, and 1396w–1 of this title] may be cited as the 'Emergency Aid to American Survivors of the Haiti Earthquake Act'.''

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–115, §1, Dec. 15, 2009, 123 Stat. 3029, provided that: ''This Act [amending sections 404 and 1383 of this title and enacting provisions set out as a note under section 404 of this title] may be cited as the 'No Social Security Benefits for Prisoners Act of 2009'.''

Pub. L. 111–63, §1, Sept. 18, 2009, 123 Stat. 2001, provided that: ''This Act [amending sections 1320b–20 and 1320b–21 of this title] may be cited as the 'WIPA and PABSS Reauthorization Act of 2009'.''

Pub. L. 111–3, §1(a), Feb. 4, 2009, 123 Stat. 8, provided that: ''This Act [enacting sections 247d–9, 1320b–9a, 1396, 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 sections 1396, 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] may be cited as the 'Children's Health Insurance Program Reauthorization Act of 2009'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–379, §1, Oct. 8, 2008, 122 Stat. 4075, provided that: ''This Act [amending sections 1395iii, 1396b, 1396u–3, and 1396u–6 of this title and section 355 of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 1396b and 1396u–6 of this title and section 355 of Title 21] may be cited as the 'QI Program Supplemental Funding Act of 2008'.''

Pub. L. 110–351, §1, Oct. 7, 2008, 122 Stat. 3949, provided that: ''This Act [enacting sections 627 and 679c of this title, amending sections 622, 625, 653, 671 to 673, 673b, and 674 to 677 of this title, sections 24 and 152 of Title 26, Internal Revenue Code, and section 323 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 671, 672, and 674 of this title and section 24 of Title 26] may be cited as the 'Fostering Connections to Success and Increasing Adoptions Act of 2008'.''

Pub. L. 110–275, §1(a), July 15, 2008, 122 Stat. 2494, provided that: ''This Act [enacting sections 280g–6, 1395b–10, 1395ss–1, and 1395aaa of this title, amending sections 254c–2, 254c–3, 603, 674, 1316, 1320b–14, 1395i–4, 1395k to 1395n, 1395u, 1395w–3, 1395w–4, 1395w–21 to 1395w–23, 1395w–27 to 1395w–28, 1395w–102, 1395w–104, 1395w–112 to 1395w–114, 1395x, 1395y, 1395aa to 1395cc, 1395kk, 1395*ll* to 1395nn, 1395rr, 1395ss, 1395ww, 1395yy, 1395eee, 1395iii, 1396a, 1396d, 1396p, 1396r–4, 1396u–3, and 1396u–5 of this title and section 3716 of Title 31, Money and Finance, enacting provisions set out as notes under sections 674, 1305, 1316, 1320b–14, 1395b–3, 1395b–4, 1395i–4, 1395k, 1395*l*, 1395m, 1395w–4, 1395w–21, 1395w–22, 1395w–27, 1395w–28, 1395w–102, 1395w–113, 1395w–114, 1395y, 1395bb, 1395cc, 1395rr, 1395ss, 1396b, 1396d, 1396p, and 1396r–8 of this title and section 3716 of Title 31, amending provisions set out as notes under sections 254c–2, 1395b–1, 1395w–3, 1395w–4, 1395ww, and 1396b, and repealing provisions set out as a note under section 1395rr of this title] may be cited as the 'Medicare Improvements for Patients and Providers Act of 2008'.''

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–173, §1(a), Dec. 29, 2007, 121 Stat. 2492, provided that: ''This Act [amending sections 254c–2, 254c–3, 1395b–6, 1395*l*, 1395u, 1395w–3a, 1395w–4, 1395w–27a, 1395w–28, 1395x, 1395y, 1395mm, 1395ww, 1396a, 1396r–4, 1396u–3, 1397dd, 1397ee, and 1397ii of this title, enacting provisions set out as notes under sections 1395w–4, 1395w–21, 1395y, 1395ww, and 1397ee of this title, amending provisions set out as notes under sections 1395*l*, 1395w–4, and 1395ww of this title, and repealing provisions set out as a note under section 1397dd of this title] may be cited as the 'Medicare, Medicaid, and SCHIP Extension Act of 2007'.''

Pub. L. 110–90, §1, Sept. 29, 2007, 121 Stat. 984, provided that: ''This Act [amending sections 1395w–4, 1396a, and 1396u–3 of this title, enacting provisions set out as notes under sections 1396a and 1396b of this title, and amending provisions set out as a note under section 1396b of this title] may be cited as the 'TMA, Abstinence Education, and QI Programs Extension Act of 2007'.''

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–432, div. B, §1, Dec. 20, 2006, 120 Stat. 2975, provided that: ''This division [amending sections 671, 1320a–2a, 1395i, 1395*l*, 1395u, 1395w–3b, 1395w–4, 1395w–21, 1395w–27a, 1395w–101, 1395w–102, 1395rr, 1395ww, 1395ddd, 1396a, 1396b, 1396*o*–1, 1396p, 1396r, 1396r–4, and 1396r–8 of this title, enacting provisions set out as notes under sections 300aa–2, 671, 1395b–1, 1395*l*, 1395u, 1395w–3b, 1395w–4, 1395w–102, 1395ww, 1395ddd, 1396b, 1396*o*–1, 1396p, and 1396r of this title, and amending provisions set out as notes under sections 1395*l*, 1395w–4, 1395eee, 1396a, 1396b, and 1396h of this title] may be cited as the 'Medicare Improvements and Extension Act of 2006'.''

Pub. L. 109–288, §1, Sept. 28, 2006, 120 Stat. 1233, provided that: ''This Act [enacting sections 621 and 625 of this title, amending sections 622 to 624, 626, 628, 628a, 628b, 629, 629a to 629i, 672, 673b, 675, 679b, 1320a–9, and 14914 of this title, repealing sections 620, 624, and 625 of this title, and enacting provisions set out as notes under sections 621, 624, 629b, 629d, and 629f of this title] may be cited as the 'Child and Family Services Improvement Act of 2006'.''

Pub. L. 109–239, §1, July 3, 2006, 120 Stat. 508, provided that: ''This Act [enacting section 673c of this title, amending sections 622, 629h, 671, and 675 of this title, repealing section 673c of this title, and enacting provisions set out as notes under sections 622 and 673c of this title] may be cited as the 'Safe and Timely Interstate Placement of Foster Children Act of 2006'.''

Pub. L. 109–171, §1, Feb. 8, 2006, 120 Stat. 4, provided that: ''This Act [see Tables for classification] may be cited as the 'Deficit Reduction Act of 2005'.''

Pub. L. 109–171, title VI, §6061, Feb. 8, 2006, 120 Stat. 96, provided that: ''This subchapter [subchapter A (§§6061–6065) of chapter 6 of subtitle A of title VI of Pub. L. 109–171, amending sections 701, 1396a, 1396b, 1396d, 1396*o* of this title and enacting provisions set out as

notes under section 1396a of this title] may be cited as the 'Family Opportunity Act of 2005' or the 'Dylan Lee James Act'.''

SHORT TITLE OF 2005 AMENDMENTS

Pub. L. 109–161, §1, Dec. 30, 2005, 119 Stat. 2958, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Child Care Continuation Act of 2005'.''

Pub. L. 109–113, §1, Nov. 22, 2005, 119 Stat. 2371, provided that: ''This Act [amending section 672 of this title] may be cited as the 'Fair Access Foster Care Act of 2005'.''

Pub. L. 109–91, §1, Oct. 20, 2005, 119 Stat. 2091, provided that: ''This Act [amending sections 1103, 1395w–102, 1396a, 1396b, 1396r–8, 1396u–3, and 1396u–5 of this title and enacting provisions set out as notes under sections 1103, 1395w–102, 1396a, and 1396b of this title] may be cited as the 'QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005'.''

Pub. L. 109–68, §1, Sept. 21, 2005, 119 Stat. 2003, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'TANF Emergency Response and Recovery Act of 2005'.''

Pub. L. 109–19, §1, July 1, 2005, 119 Stat. 344, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF Extension Act of 2005'.''

Pub. L. 109–4, §1, Mar. 25, 2005, 119 Stat. 17, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2005'.''

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108–308, §1, Sept. 30, 2004, 118 Stat. 1135, provided that: ''This Act [amending sections 603 and 609 of this title] may be cited as the 'Welfare Reform Extension Act, Part VIII'.''

Pub. L. 108–295, §1, Aug. 9, 2004, 118 Stat. 1090, provided that: ''This Act [amending sections 503 and 653 of this title and enacting provisions set out as a note under section 503 of this title] may be cited as the 'SUTA Dumping Prevention Act of 2004'.''

Pub. L. 108–262, §1, June 30, 2004, 118 Stat. 696, provided that: ''This Act [amending section 603 of this title] may be cited as the 'TANF and Related Programs Continuation Act of 2004'.''

Pub. L. 108–210, §1, Mar. 31, 2004, 118 Stat. 564, provided that: ''This Act [amending section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2004'.''

Pub. L. 108–203, §1(a), Mar. 2, 2004, 118 Stat. 493, provided that: ''This Act [enacting section 1320a–8b of this title, amending sections 401, 402, 404, 405, 406, 408, 409 to 411, 414, 416, 418, 422, 423, 426, 429, 434, 903, 1004, 1007, 1008, 1011, 1310, 1320a–8, 1320a–8a, 1320b–10, 1320b–13, 1320b–17, 1320b–19 to 1320b–21, 1382 to 1382c, 1383, and 1383a of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, Internal Revenue Code, and sections 231n and 231n–1 of Title 45, Railroads, repealing section 1320b–18 of this title, enacting provisions set out as notes under sections 402, 404, 405, 406, 408, 411, 414, 416, 418, 422, 902, 903, 1320a–8, 1320b–10, 1320b–13, 1320b–19 to 1320b–21, 1382 to 1382c, and 1383 of this title and section 1113 of Title 31, Money and Finance, and amending provisions set out as a note under section 434 of this title] may be cited as the 'Social Security Protection Act of 2004'.''

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108–173, §1(a), Dec. 8, 2003, 117 Stat. 2066, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Prescription Drug, Improvement, and Modernization Act of 2003'.''

Pub. L. 108–145, §1, Dec. 2, 2003, 117 Stat. 1879, provided that: ''This Act [amending sections 673b and 674 of this title and enacting provisions set out as notes under section 673b of this title] may be cited as the 'Adoption Promotion Act of 2003'.''

Pub. L. 108–40, §1, June 30, 2003, 117 Stat. 836, provided that: ''This Act [amending sections 603, 606, 609, 612, 614, 618, 710, 1308, 1320a–9, 1396a, and 1396r–6 of this title and enacting provisions set out as a note under section 603 of this title] may be cited as the 'Welfare Reform Extension Act of 2003'.''

SHORT TITLE OF 2002 AMENDMENTS

Pub. L. 107–133, §1, Jan. 17, 2002, 115 Stat. 2413, provided that: ''This Act [enacting sections 629f to 629i of this title, amending sections 629, 629a, 629c, 629d, 629e, 674, and 677 of this title, and enacting provisions set out as a note under section 677 of this title] may be cited as the 'Promoting Safe and Stable Families Amendments of 2001'.''

Pub. L. 107–121, §1, Jan. 15, 2002, 115 Stat. 2384, provided that: ''This Act [amending sections 1396a and 1396n of this title and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–105, §1, Dec. 27, 2001, 115 Stat. 1003, provided that: ''This Act [amending sections 1320d and 1395y of this title and enacting provisions set out as notes under sections 1320d–4 and 1395y of this title] may be cited as the 'Administrative Simplification Compliance Act'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–554, §1(a)(1) [title VI, §601], Dec. 21, 2000, 114 Stat. 2763, 2763A–74, provided that: ''This title [enacting and amending provisions set out as notes under section 604 of this title] may be cited as the 'Assets for Independence Act Amendments of 2000'.''

Pub. L. 106–554, §1(a)(6) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–463, provided that: ''This Act [H.R. 5661, as enacted by section 1(a)(6) of Pub. L. 106–554, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'.''

Pub. L. 106–553, §1(a)(2) [title VI, §635(a)], Dec. 21, 2000, 114 Stat. 2762, 2762A–114, which provided that section 1(a)(2) [title VI, §635] of Pub. L. 106–553, enacting section 1320b–23 of this title, amending section 408 of this title, and enacting provisions set out as notes under sections 408 and 1320b–23 of this title, could be cited as ''Amy Boyer's Law'', was repealed by Pub. L. 106–554, §1(a)(4) [div. A, §213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

Pub. L. 106–354, §1, Oct. 24, 2000, 114 Stat. 1381, provided that: ''This Act [enacting section 1396r–1b of this title, amending sections 1396a, 1396b, and 1396d of this title, and enacting provisions set out as a note under section 1396a of this title] may be cited as the 'Breast and Cervical Cancer Prevention and Treatment Act of 2000'.''

Pub. L. 106–182, §1, Apr. 7, 2000, 114 Stat. 198, provided that: ''This Act [amending sections 402 and 403 of this title and enacting provisions set out as a note under section 402 of this title] may be cited as the 'Senior Citizens' Freedom to Work Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–170, §1(a), Dec. 17, 1999, 113 Stat. 1860, provided that: ''This Act [see Tables for classification] may be cited as the 'Ticket to Work and Work Incentives Improvement Act of 1999'.''

Pub. L. 106–169, §1(a), Dec. 14, 1999, 113 Stat. 1822, provided that: ''This Act [enacting subchapter VIII of this chapter and sections 1306b, 1320a–8a, 1320b–6, and 1320b–18 of this title, amending sections 401, 402, 404, 405, 602, 604, 609, 613, 616, 629a, 652, 654, 655, 657, 659, 666, 671, 672, 673b, 674, 677, 903, 904, 909, 1320a–8, 1320b–7, 1320b–17, 1382, 1382a, 1382b, 1383, 1396a, and 1396d of this title and sections 3701 and 3716 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 402, 404, 602, 604, 657, 671, 677, 904, 1320a–8, 1320a–8a, 1320b–6, 1382, 1382a, 1382b, 1383, and 1396a of

this title and section 3701 of Title 31] may be cited as the 'Foster Care Independence Act of 1999'.''

Pub. L. 106–113, div. B, §1000(a)(6) [§1(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–321, provided that: ''This Act [H.R. 3426, as enacted by section 1000(a)(6) of Pub. L. 106–113, see Tables for classification] may be cited as the 'Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999'.''

Pub. L. 106–4, §1, Mar. 25, 1999, 113 Stat. 7, provided that: ''This Act [amending section 1396r of this title and enacting provisions set out as a note under section 1396r of this title] may be cited as the 'Nursing Home Resident Protection Amendments of 1999'.''

SHORT TITLE OF 1998 AMENDMENTS

Pub. L. 105–306, §1, Oct. 28, 1998, 112 Stat. 2926, provided that: ''This Act [enacting section 1320b–17 of this title, amending sections 404, 603, 655, 1382a, 1382b, and 1383 of this title and sections 1611 and 1621 of Title 8, Aliens and Nationality, enacting provisions set out as notes under sections 404, 603, 652, 655, and 1382a of this title, and amending provisions set out as notes under section 652 of this title and section 3306 of Title 26, Internal Revenue Code] may be cited as the 'Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998'.''

Pub. L. 105–200, §1, July 16, 1998, 112 Stat. 645, provided that: ''This Act [enacting section 658a of this title, amending sections 603, 604, 609, 613, 622, 629b, 652, 653, 655, 658, 658a, 666, 669, 669a, 671, 673b, 674, and 1314a of this title and sections 1021, 1144, and 1169 of Title 29, Labor, repealing section 658 of this title, enacting provisions set out as notes under sections 608, 651 to 653, 655, 658a, 666, and 671 of this title, sections 1021, 1144, and 1169 of Title 29, and section 5309 of Title 49, Transportation, amending provisions set out as notes under sections 608, 652, 658, and 658a of this title, and repealing provisions set out as a note under section 658 of this title] may be cited as the 'Child Support Performance and Incentive Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–89, §1(a), Nov. 19, 1997, 111 Stat. 2115, provided that: ''This Act [enacting sections 673b, 678, and 679b of this title, amending sections 603, 622, 629 to 629b, 653, 671 to 673, 674, 675, 677, and 1320a–9 of this title and sections 645 and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 613, 622, 629a, 671, 673, 675, 679b, 1320a–9, 5111, and 5113 of this title, and amending provisions set out as a note under section 670 of this title] may be cited as the 'Adoption and Safe Families Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–193, §1, Aug. 22, 1996, 110 Stat. 2105, provided that: ''This Act [see Tables for classification] may be cited as the 'Personal Responsibility and Work Opportunity Reconciliation Act of 1996'.''

Pub. L. 104–121, title I, §101, Mar. 29, 1996, 110 Stat. 847, provided that: ''This title [enacting sections 1320b–15 and 1383e of this title, amending sections 401 to 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of this title and sections 665e and 901 of Title 2, The Congress, enacting provisions set out as notes under sections 401 to 403, 405, 902, 1320b–15, and 1382 of this title, and repealing provisions set out as a note under section 425 of this title] may be cited as the 'Senior Citizens' Right to Work Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–432, §1, Oct. 31, 1994, 108 Stat. 4398, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Act Amendments of 1994'.''

Pub. L. 103–382, title V, §551, Oct. 20, 1994, 108 Stat. 4056, provided that: ''This subpart [subpart 1 (§§551–554) of part E of title V of Pub. L. 103–382 enacting section 5115a of this title, amending section 622 of this title, and enacting provisions set out as a note under section 622 of this title] may be cited as the 'Howard M. Metzenbaum Multiethnic Placement Act of 1994'.''

Pub. L. 103–296, §1(a), Aug. 15, 1994, 108 Stat. 1464, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Independence and Program Improvements Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–234, §1, Dec. 12, 1991, 105 Stat. 1793, provided that: ''This Act [amending sections 1396a, 1396b, and 1396r–4 of this title and enacting provisions set out as notes under sections 1396a, 1396b, and 1396r–4 of this title] may be cited as the 'Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991'.''

SHORT TITLE OF 1989 AMENDMENTS

Pub. L. 101–239, title X, §10000, Dec. 19, 1989, 103 Stat. 2470, provided that: ''This title [see Tables for classification] may be cited as the 'Miscellaneous and Technical Social Security Act Amendments of 1989'.''

Pub. L. 101–234, §1, Dec. 13, 1989, 103 Stat. 1979, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Catastrophic Coverage Repeal Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–485, §1(a), Oct. 13, 1988, 102 Stat. 2343, provided that: ''This Act [enacting sections 617, 668, 669, 681 to 687, and 1396r–6 of this title, amending sections 405, 426, 503, 504, 602, 603, 607, 652 to 655, 657, 658, 666, 667, 671, 704, 1301, 1308, 1315, 1318, 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, 1397d, and 1397e of this title, section 5315 of Title 5, Government Organization and Employees, and sections 21, 51, 62, 129, 6103, 6109, and 7213 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, 633 to 645, and 1320a–2 of this title, enacting provisions set out as notes under sections 405, 426, 602, 603, 607, 618, 652 to 655, 666, 667, 681, 704, 1308, 1315, 1320a–2, 1395k, 1396b, and 1396r–6 of this title and sections 21, 62, 6103, and 6109 of Title 26, and amending provisions set out as notes under sections 603, 606, 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395k, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title and sections 6402 of Title 26] may be cited as the 'Family Support Act of 1988'.''

Pub. L. 100–364, §1, July 11, 1988, 102 Stat. 822, provided: ''That this Act [amending section 645 of this title] may be cited as the 'WIN Demonstration Program Extension Act of 1988'.''

Pub. L. 100–360, §1(a), July 1, 1988, 102 Stat. 683, provided that: ''This Act [enacting sections 1320b–10, 1395b–2, 1395i–1a, 1395t–1, 1395t–2, 1395w–3, 1396r–4, and 1396r–5 of this title and section 59B of Title 26, Internal Revenue Code, amending sections 254*o*, 294f, 300aa–12, 300aa–15, 300aa–21, 401, 426, 704, 912, 1320a–7, 1320a–7a, 1320a–7b, 1320b–5, 1320b–7, 1320b–8, 1320c–3, 1320c–5, 1320c–9, 1382, 1382b, 1395c to 1395f, 1395h, 1395i, 1395i–2, 1395i–3, 1395k to 1395n, 1395r to 1395t, 1395u to 1395w–2, 1395x to 1395z, 1395aa to 1395dd, 1395gg, 1395mm, 1395ss, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396j, 1396n to 1396p, 1396r, 1396r–1, 1396r–3, 1396r–4, 1396s, and 1397d of this title and section 6050F of Title 26, enacting provisions set out as notes under this section and sections 294f, 1320b–7, 1320b–10, 1320c–3, 1395b, 1395b–1, 1395b–2, 1395d, 1395e, 1395h, 1395i–1a, 1395k, 1395*l*, 1395m, 1395r, 1395u, 1395v, 1395x, 1395y, 1395cc, 1395*ll*, 1395mm, 1395ss, 1395ww, 1396a, 1396b, 1396d, 1396r–1, and 1396r–5 of this title, section 106 of Title 1, General Provisions, section 8902 of Title 5, Government Organization and Employees, and section 59B of Title 26, amending provisions set out as notes under sections 426, 1320a–7a, 1320c–2, 1320c–3, 1395b–1, 1395h, 1395i–3, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–1, 1395x, 1395y, 1395aa, 1395dd, 1395mm, 1395pp, 1395ss, 1395ww, 1395bbb, 1396a,

1396b, and 1396r of this title, and repealing provisions set out as a note under section 1395*l* of this title] may be cited as the 'Medicare Catastrophic Coverage Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–93, §1(a), Aug. 18, 1987, 101 Stat. 680, provided that: ''This Act [enacting sections 1395aaa and 1396r–2 of this title, amending sections 704, 1320a–3, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as notes under sections 1320a–7 and 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] may be cited as the 'Medicare and Medicaid Patient and Program Protection Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–643, §1, Nov. 10, 1986, 100 Stat. 3574, provided that: ''This Act [amending sections 1382, 1382c, 1382h, 1383, 1383c, 1396a, and 1396s of this title, enacting provisions set out as notes under sections 1382, 1382h, 1383, 1383c, and 1396a of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Employment Opportunities for Disabled Americans Act'.''

Pub. L. 99–272, title IX, §9000, Apr. 7, 1986, 100 Stat. 151, provided that: ''This title [enacting sections 1320c–13, 1395w–1, 1395dd, 1396r, and 1396s of this title, amending sections 401, 701, 702, 704, 709, 1301, 1320a–2, 1320c–2, 1320c–3, 1395e, 1395f, 1395i, 1395i–2, 1395*l*, 1395p to 1395r, 1395t, 1395u, 1395x, 1395y, 1395cc, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396k, 1396n, and 1396*o* of this title and sections 623, 631, and 1144 of Title 29, Labor, enacting provisions set out as notes under sections 401, 1301, 1320a–2, 1320c–2, 1320c–3, 1320c–13, 1395b, 1395b–1, 1395e, 1395h, 1395i–2, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395mm, 1395rr, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, and 1396r of this title and section 1144 of Title 29, and amending provisions set out as notes under sections 1395c, 1395h, 1395y, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–460, §1, Oct. 9, 1984, 98 Stat. 1794, provided that: ''This Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'.''

Pub. L. 98–378, §1, Aug. 16, 1984, 98 Stat. 1305, provided that: ''This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'.''

Pub. L. 98–369, div. B, title III, §2300, July 18, 1984, 98 Stat. 1061, provided that: ''This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 291i, 300s–1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a–1, 1320a–7 to 1320a–8, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm to 1395*oo*, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 291i, 701, 907a, 1308, 1310, 1317, 1320a–1, 1320a–7, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–21, §1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98–21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a–1, 1320c–2, 1322, 1382, 1382a, 1382f, 1382g, 1395f, 1395i, 1395i–2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b–1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 5123 of Title 38, Veterans' Benefits, and section 231n of Title 45, Railroads] may be cited as the ''Social Security Amendments of 1983''.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–248, title I, §141, Sept. 3, 1982, 96 Stat. 381, provided that: ''This subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248, enacting part B of this subchapter, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under section 1320c of this title] may be cited as the 'Peer Review Improvement Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XXI, §2100, Aug. 13, 1981, 95 Stat. 783, provided that: ''Subtitles A [sections 2101–2114 of Pub. L. 97–35, enacting sections 1320a–7a, 1395uu, and 1395vv of this title, amending sections, 1320a–7, 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, 1395*l*, 1395n, 1395q, 1395x, 1395y, 1396a, and 1396b of this title, repealing sections 1320c–13 and 1320c–20 of this title, and enacting provisions set out as notes under sections 1320c, 1320c–1, 1320c–3, 1395*l*, 1395x, 1395y, 1395uu, and 1396b of this title], B [sections 2121–2156 of Pub. L. 97–35, amending sections 632a, 1320c–3, 1320c–4, 1320c–7, 1395d, 1395e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395x, 1395y, 1395cc, and 1395rr of this title and section 162 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 1320c–3, 1395e, 1395f, 1395*l*, 1395p, 1395x, 1395y and 1395rr of this title and section 162 of Title 26, and repealing provisions set out as notes under sections 1395b–1, 1395g, and 1395*ll* of this title], and C [sections 2161–2184 of Pub. L. 97–35, enacting sections 1320b–5 and 1396n of this title, amending sections 301, 302, 303, 306, 603, 606, 1201, 1203, 1206, 1301, 1308, 1351, 1353, 1355, 1396a, 1396b, 1396d, and 1396n of this title, and enacting provisions set out as notes under sections 603, 1308, 1381, 1382, 1383, 1385, 1396a, 1396b, 1396d, and 1396n of this title] of this title may be cited as the 'Medicare and Medicaid Amendments of 1981'.''

Pub. L. 97–35, title XXI, §2191, Aug. 13, 1981, 95 Stat. 818, provided that: ''This subtitle [subtitle D (sections 2191–2194) of title XXI of Pub. L. 97–35, enacting sections 701 to 709 of this title, amending sections 247a, 300a–27, 300b, 300b–3, 300b–6, 300c–11, 300c–21, 701, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and

300c–21 of this title, enacting provisions set out as notes under sections 701, 706, and 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] may be cited as the 'Maternal and Child Health Services Block Grant Act'.''

Pub. L. 97–35, title XXIII, §2351, Aug. 13, 1981, 95 Stat. 867, provided that: ''This subtitle [subtitle C (§§2351–2355) of title XXIII of Pub. L. 97–35, enacting sections 1397 to 1397f of this title, amending sections 303, 602, 603, 607, 671, 1203, 1301, 1308, 1315, 1316, 1320a–3, 1320a–5, 1320a–7, 1353, 1382e, 1382h, and 1382i of this title, enacting provisions set out as notes under sections 602, 603, 1381, 1383, and 1397 of this title, and repealing a provision set out as a note under section 1397a of this title] may be cited as the 'Social Services Block Grant Act'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–611, §6, Dec. 28, 1980, 94 Stat. 3568, provided that: ''Sections 6 to 10 of this Act [enacting section 663 of this title, and section 1738A of Title 28, Judiciary and Judicial Procedure, amending sections 654 and 655 of this title, and enacting provisions set out as notes under section 1073 of Title 18, Crimes and Criminal Procedure, section 1738A of Title 28, and section 663 of this title] may be cited as the 'Parental Kidnaping Prevention Act of 1980'.''

Pub. L. 96–499, title IX, §900, Dec. 5, 1980, 94 Stat. 2609, provided that: ''This title [enacting sections 632a, 1320a–7, 1320a–8, 1320b–4, 1395tt, 1396*l*, and 1396m of this title, amending sections 426, 705, 1320a–2, 1320a–3, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–22, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395v, 1395x, 1395y, 1395z, 1395aa, 1395cc, 1395gg, 1395nn, 1395*oo*, 1395pp, 1395rr, 1396a, 1396b, 1396d, 1396h, 1396i, and 1397b of this title, and section 231f of Title 45, Railroads, repealing section 1395m of this title, and enacting provisions set out as notes under sections 705, 1320a–8, 1320b–4, 1320c, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–15, 1395b–1, 1395d, 1395f, 1395g, 1395k, 1395*l*, 1395n, 1395p, 1395u, 1395v, 1395x, 1395y, 1395gg, 1395*ll*, 1395pp, 1395tt, 1396a, and 1396b of this title] may be cited as the 'Medicare and Medicaid Amendments of 1980'.''

Pub. L. 96–272, §1, June 17, 1980, 94 Stat. 500, provided that: ''This Act [enacting sections 612, 627, 628, 670 to 673a, 674 to 676, 1320b–2, and 1320b–3 of this title, amending sections 602, 608, 620–625, 652, 658, 672, 673, 675, 1308, 1318, 1382d, 1395y, 1395cc, 1396a, 1397, 1397a, 1397b, 1397c, and 1397d of this title and section 50B of Title 26, Internal Revenue Code, repealing section 608 of this title, enacting provisions set out as notes under sections 602, 603, 608, 620, 622, 670, 672, 675, 1320b–2, 1320b–3, 1396a, and 1397a of this title and section 50B of Title 26, and amending provisions set out as notes under sections 655, 1397a, and 1397e–1 of this title] may be cited as the 'Adoption Assistance and Child Welfare Act of 1980'.''

Pub. L. 96–265, §1, June 9, 1980, 94 Stat. 441, provided: ''That this Act [enacting sections 613, 1320a–6, 1382h, 1382i, 1382j, and 1395ss of this title, amending sections 401, 402, 403, 404, 405, 415, 416, 418, 421, 422, 423, 425, 426, 503, 504, 602, 603, 652, 654, 655, 907a, 1310, 1382, 1382a, 1382c, 1382e, 1383, 1395c, 1395i, 1395p, and 1397b of this title, sections 6103 and 7213 of Title 26, Internal Revenue Code, and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 401, 402, 403, 405, 405a, 415, 418, 421, 423, 425, 426, 503, 602, 603, 613, 652, 655, 1310, 1320a–6, 1382, 1382a, 1382c, 1382h, 1382j, 1395*ll*, and 1395ss of this title and under section 6103 of Title 26] may be cited as the 'Social Security Disability Amendments of 1980'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–216, §1, Dec. 20, 1977, 91 Stat. 1509, provided in part that Pub. L. 95–216 [enacting sections 433, 611, 907a, and 909 of this title, amending sections 401, 402, 403, 405, 409, 410, 411 to 413, 415 to 418, 423, 424a, 426, 429, 430, 602, 603, 1315, 1395r, 1395u, and 1395x of this title, section 441i of Title 2, The Congress, sections 1401, 1402, 3101, 3102, 3111, 3121, 3304, 3306, and 6051 of Title 26, Internal Revenue Code, and section 231b of Title 45, Railroads, and enacting provisions set out as notes under sections 402, 403, 409, 411, 413, 418, 424a, 430, 602, 603, 902, 907, 909, 1383, and 1395x of this title, section 441i of Title 2, sections 1401, 1402, 3102, 3111, and 3121 of Title 26, and section 231b of Title 45] may be cited as the ''Social Security Amendments of 1977''.

Pub. L. 95–142, §1, Oct. 25, 1977, 91 Stat. 1175, provided that: ''This Act [enacting sections 1320a, 1320a–3 to 1320a–5, 1320c–20 to 1320c–22, and 1396k of this title, amending sections 254e, 1301, 1320c–1, 1320c–3, 1320c–4, 1320c–6, 1320c–7, 1320c–9, 1320c–12, 1320c–15 to 1320c–17, 1395b–1, 1395f, 1395g, 1395h, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395nn, 1396a, 1396b, 1396h, 1397a, 1397b, and 3524 of this title, and enacting provisions set out as notes under sections 254e, 1320a, 1320a–3, 1320a–5, 1320c–6, 1320c–7, 1395f, 1395g, 1395h, 1395*l*, 1395x, 1395cc, 1395*ll*, 1395nn, 1396a, and 1396b of this title] may be cited as the 'Medicare-Medicaid Anti-Fraud and Abuse Amendments'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–202, §8(a), Jan. 2, 1976, 89 Stat. 1137, provided that: ''This section [enacting section 432 of this title, amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401, 418, and 432 of this title] may be cited as the 'Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93–647, §1, Jan. 4, 1975, 88 Stat. 2337, provided: ''That this Act [enacting subchapter XX of this chapter, sections 651 to 660 of this title, and section 6305 of Title 26, Internal Revenue Code, amending sections 303, 602, 603, 604, 606, 622, 1203, 1306, 1308, 1315, 1316, 1353, and 1383 note of this title, repealing sections 610, 801 to 805, and 1320b of this title, and enacting provisions set out as notes under sections 602, 651, 1320b, 1397, and 1397a of this title] may be cited as the 'Social Services Amendments of 1974'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–603, §1, Oct. 30, 1972, 86 Stat. 1329, provided in part that Pub. L. 92–603 [enacting sections 431, 801 to 805, 1320a–1, 1320a–2, 1320c to 1320c–19, 1381a, 1382a to 1382e, 1383a to 1383c, 1395i–2, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396h, 1396i, and 3502a of this title, and section 228s–3 of Title 45, Railroads, amending sections 302, 306, 401, 402, 403, 405, 408, 409, 410, 410 note, 411, 414, 415, 416, 418, 422, 423, 424a, 425, 426, 427, 429, 430, 602, 603, 620, 705, 706, 709, 1202, 1206, 1301, 1306, 1308, 1352, 1355, 1381, 1382, 1383, 1385, 1395b–1, 1395c, 1395f, 1395h, 1395i, 1395j, 1395k, 1395*l*, 1395n, 1395*o*, 1395p, 1395q, 1395r, 1395s, 1395t, 1395u, 1395w, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd, 1395ff, 1395gg, 1395ii, 1395kk, 1395*ll*, 1395mm, 1395nn, 1396a, 1396b, 1396b–1, 1396d, 1396g, 1396h, and 1396i of this title, sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 1431, 2012, 2019, and 2023 of Title 7, Agriculture, and sections 1401, 1402, 3101, 3111, 3121, 6051, and 6413 of Title 26, Internal Revenue Code, repealing sections 301 to 306, 1201 to 1206, 1351, 1352, 1353, 1354, 1355, and 1396e of this title and section 639 of Title 25, Indians, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 408, 409, 410, 411, 414, 415, 416, 418, 423, 424a, 426, 429, 602, 620, 705, 801, 1301, 1306, 1308, 1320a–1, 1320b, 1381, 1382e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395s, 1395u, 1395w, 1395x, 1395aa, 1395cc, 1395ff, 1395gg, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396a, 1396b, 2396d, and 1396e of this title, section 5315 of Title 5, sections 1431 and 2012 of Title 7, section 639 of Title 25, and sections 1401, 6051, and 6413 of Title 26,] may be cited as the ''Social Security Amendments of 1972''.

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–172, title X, §1001, Dec. 30, 1969, 83 Stat. 737, provided that: ''This title [amending sections 401 to 403,

415, 427, and 428 of this title, and enacting provisions set out as notes under sections 401 to 403, 415 and 427 of this title] may be cited as the 'Social Security Amendments of 1969'.''

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–248, §1, Jan. 2, 1968, 81 Stat. 821, provided that this Act [enacting sections 429, 610, 620 to 626, 630 to 644, 908, 1319–1320a, 1395b–1, and 1396e to 1396g of this title, amending sections 302 to 304, 401 to 406, 409 to 411, 413, 415 to 418, 421 to 423, 424a, 425, 426, 426a, 427, 428, 601 to 604, 606 to 608, 622, 701 to 715, 729, 907, 1202 to 1204, 1306, 1308 to 1311, 1313 to 1318, 1352 to 1354, 1361, 1382, 1383, 1395d to 1395f, 1395i, 1395k, 1395*l*, 1395n, 1395p to 1395y, 1395aa, 1395cc, 1395dd, 1395gg, 1395*ll*, 1396a, 1396b, and 1396d of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 3125, 3306, 6051, and 6413 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, Railroads, repealing sections 721 to 728, 1317, and 1395ee of this title, enacting provisions set out as notes under sections 242b, 302, 303, 402 to 405, 409, 410, 413, 415, 416, 418, 423, 424a, 427, 601 to 603, 607, 609, 620, 622, 626, 633, 701, 705, 1301, 1308, 1319, 1395c to 1395f, 1395j to 1395*l*, 1395n, 1395p, 1395u, 1395x, 1395aa, 1395dd, 1396a, 1396b, 1396d, and 1396g of this title, and amending provisions set out as notes under sections 603 and 608 of this title and sections 1401, 1402, 3121, and 6051 of Title 26] may be cited as the ''Social Security Amendments of 1967.''

Pub. L. 90–248, title III, §306, Jan. 2, 1968, 81 Stat. 930, provided that: ''This title [enacting subchapter V of this chapter, amending sections 705, 729, 1396a, and 1396d of this title, enacting provisions set out as notes under section 705 of this title, and amending provisions set out as notes under section 242b of this title] may be cited as the 'Child Health Act of 1967'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–97, §1, July 30, 1965, 79 Stat. 286, provided that this Act [enacting sections 424a, 426, 427, 716, 729–1, 907, 1316, 1317, 1318, 1395 to 1395dd, 1395ee, 1395gg to 1395*ll* and 1396 to 1396d of this title, section 6053 of Title 26, Internal Revenue Code, and section 228s–2 of Title 45, Railroads; amending sections 302, 303, 306, 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, 602, 603, 606, 701, 703, 704, 711, 713, 714, 721 to 723, 1202, 1203, 1206, 1301, 1306, 1308, 1309, 1312, 1315, 1352, 1353, 1355, 1382, 1383, 1385, 1391, 1392, and 1395kk of this title, sections 72, 79, 213, 401, 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3201, 3211, 3221, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a, 228e, and 228s–2 of title 45, repealing section 727 of this title, enacting provisions set out as notes under sections 242b, 302, 303, 306, 402, 403, 405, 410, 411, 415, 416, 418, 423, 424a, 426, 427, 602, 722, 729–1, 1202, 1301, 1308, 1309, 1315, 1316, 1352, 1382, 1395*l*, 1395*o*, 1395p, 1396b, and 2981 of this title, sections 213, 1401, 1402, 3121, 3201, and 6053 of Title 26, and section 228s–2 of Title 45, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the ''Social Security Amendments of 1965''.

Pub. L. 89–97, title I, July 30, 1965, 79 Stat. 290, provided that: ''This title [enacting subchapter XVIII of this chapter, sections 426, 907, and 1396 to 1396d of this title, and section 228s–2 of Title 45, Railroads, amending sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309, 1315, 1353, 1383, and 1395kk of this title, sections 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, and enacting provisions set out as notes under sections 426, 1301, 1309, 1315, 1395*l*, 1395*o*, 1395p, and 1396b of this title, sections 213 and 3201 of Title 26, and section 228s–2 of Title 45] may be cited as the 'Health Insurance for the Aged Act'.''

Pub. L. 89–97, title III, July 30, 1965, 79 Stat. 361, provided that: ''This title [enacting sections 424a and 427 of this title and section 6053 of Title 26, Internal Revenue Code, amending sections 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, and 1306 of this title, sections 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a and 228e of Title 45, Railroads, enacting provisions set out as notes under sections 402, 403, 405, 410, 411, 415, 416, 418, 424, 424a, and 427 of this title and sections 1401, 1402, 3121, and 6053 of Title 26, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the 'Old-Age, Survivors, and Disability Insurance Amendments of 1965'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–156, §1, Oct. 24, 1963, 77 Stat. 273, provided: ''That this Act [enacting subchapter XVII of this chapter and sections 729 and 729a of this title, amending sections 701, 702, 711, and 712 of this title, and enacting provisions set out as a note under section 1301 of this title] may be cited as the 'Maternal and Child Health and Mental Retardation Planning Amendments of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–543, §1, July 25, 1962, 76 Stat. 172, provided in part that this Act [enacting sections 609, 727, 728, 1314, 1315, and 1381 to 1385 of this title, amending sections 301 to 303, 306, 601 to 609, 721 to 723, 726, 906, 1201 to 1203, 1206, 1301, 1308, 1309, 1311, 1313, 1351 to 1353, and 1355 of this title, repealing section 1202a of this title and provisions set out as notes under sections 1202a and 1308 of this title, and enacting provisions set out as notes under sections 302, 303, 306, 601, 603, 606, 608, 609, 722, 1202, 1301, 1308, and 1383 of this title], may be cited as the ''Public Welfare Amendments of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–64, §1, June 30, 1961, 75 Stat. 131, provided: ''That this Act [enacting section 1313 of this title, amending sections 303, 402, 403, 409, 413, 414, 415, 416, 418, 423, 1203, 1308, and 1353 of this title, sections 1401, 1402, 3101 and 3111 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 414, 415, 416, 1301, and 1308 of this title and under sections 1401 and 1402 of Title 26] may be cited as the 'Social Security Amendments of 1961.' ''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–778, §1, Sept. 13, 1960, 74 Stat. 924, provided that this Act [enacting sections 726 and 1312 of this title and sections 3125 and 3308 of Title 26, Internal Revenue Code, amending sections 301 to 304, 306, 401, 401a, 402, 403, 405, 408 to 411, 413 to 416, 418, 422, 423, 501, 701, 702, 704, 711, 712, 714, 721, 722, 1101 to 1104, 1202, 1301, 1308, 1321 to 1324, 1361, 1363, 1364, 1367, 1371, and 1400c of this title, sections 1402, 1403, 3121, 3301, 3302, 3305, 3306, 6205, 6413, 7213, and 7701 of Title 26, section 49d of Title 29, Labor, sections 228a, 228c, and 228e of Title 45, Railroads, and section 1421h of Title 48, Territories and Insular Possessions, repealing section 419 of this title, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 405, 410, 411, 413 to 418, 422, 423, 701, 1101, 1202, 1202a, 1301, 1321, 1362, 1363, and 1364 of this title, sections 1402, 3121, 3301, 3304, 3305, and 3306 of Title 26, and section 49d of Title 29] may be cited as the ''Social Security Amendments of 1960.''

Pub. L. 86–778, title V, §501, Sept. 13, 1960, 74 Stat. 970, provided that: ''This title [enacting section 3308 of Title 26, Internal Revenue Code, amending sections 501, 1101 to 1104, 1301, 1321 to 1324, 1361 to 1364, 1367, 1371, and 1400c of this title, sections 3301, 3302, 3305, 3306, and 3309 of Title 26, and section 49d of Title 29, Labor, and enacting provisions set out as notes under sections 1301, 1321, and 1362 to 1364 of this title, sections 3301, 3304, and 3305 of Title 26, and section 49d of Title 29] may be cited as the 'Employment Security Act of 1960'.''

SHORT TITLE OF 1958 AMENDMENT

Pub. L. 85–840, §1, Aug. 28, 1958, 72 Stat. 1013, provided that this Act [enacting sections 722 to 725 and 1311 of this title, amending sections 302, 303, 401, 402, 403, 406, 408, 409 to 411, 413 to 418, 422, 423, 425, 603, 701, 702, 711,

712, 1203, 1301, 1306, 1308, and 1353 of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 6334, and 6413 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, repealing section 424 of this title, and enacting provisions set out as notes under sections 303, 402, 403, 410, 411, 415, 416, 417, 418, 422, 721, 1202a, 1301 of this title and sections 1401, 1402, and 3121 of Title 26] should be popularly known as the ''Social Security Amendments of 1958''.

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, §1, 70 Stat. 807, provided: ''That this Act [enacting sections 401a, 423, 424, 425, 906, and 1310 of this title and section 3113 of Title 26, Internal Revenue Code, amending sections 301 to 303, 401, 402, 403, 405, 409 to 411, 413 to 416, 418, 421, 422, 601 to 603, 606, 721, 1201 to 1203, 1301, 1308, and 1351 to 1353 of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, and sections 228 and 228e of Title 45, Railroads, and amending provisions set out as a note under section 3121 of Title 26] may be cited as the 'Social Security Amendments of 1956'.''

SHORT TITLE OF 1954 AMENDMENT

Act Aug. 5, 1954, ch. 657, §1, 68 Stat. 668, provided that: ''This Act [enacting sections 1101 to 1103, 1322, and 1323 of this title and amending sections 503, 1104, and 1321 of this title and sections 1601, 1603, and 1607 of former Title 26, Internal Revenue Code of 1939] may be cited as the 'Employment Security Administration Financing Act of 1954'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 18, 1952, ch. 945, §1, 66 Stat. 767, provided that: ''This Act [enacting sections 420, 421, and 1309 of this title, amending sections 303, 403, 405, 413, 414, 415, 416, 417, 603, 1203, and 1353 of this title and sections 228a, 228e of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 413, 415, and 417 of this title] may be cited as the 'Social Security Act Amendments of 1952'.''

SHORT TITLE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, §1, 64 Stat. 477, provided in part that act Aug. 28, 1950, may be cited as the ''Social Security Act Amendments of 1950''. For complete classification of this Act to the Code, see Tables.

§ 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b) of this section, the term ''applicable agency'' means—

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

(c) Cost reimbursement

Notwithstanding sections 552 and 552a of title 5 or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 1002 of title 29) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which—

(1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and

(2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 405(r) of this title.

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (e)[1] of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Pub. L. 85–840, title VII, § 701, Aug. 28, 1958, 72 Stat. 1055; Pub. L. 89–97, title I, § 108(c), title III, § 340, July 30, 1965, 79 Stat. 339, 411; Pub. L. 90–248, title I, § 168, title II, § 241(c)(1), Jan. 2, 1968, 81 Stat. 875, 917; Pub. L. 92–603, title II, § 249C(a), Oct. 30, 1972, 86 Stat. 1428; Pub. L. 93–647, § 101(d), Jan. 4, 1975, 88 Stat. 2360; Pub. L. 97–35, title XXII, § 2207, Aug. 13, 1981, 95 Stat. 838; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), July 18, 1984, 98 Stat. 1170, 1171; Pub. L. 103–296, title I, § 108(b)(2)–(5), title III, §§ 311(a), 313(a), Aug. 15, 1994, 108 Stat. 1481, 1482, 1525, 1530.)

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a)(1), probably refers to former title VIII of the Act, which was classified to subchapter VIII (§ 1001 et seq.) of this chapter prior to its omission from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 313(a), in par. (1), substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(2), designated existing provisions as par. (1), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''employee of the applicable agency'' for ''employee of the Department of Health and Human Services'' in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, § 108(b)(3), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''applicable agency which'' for ''Department of Health and Human Services which''.

Subsec. (c). Pub. L. 103–296, § 108(b)(4), substituted ''the Commissioner of Social Security or the Secretary'' for ''the Secretary'' where first appearing and ''such Commissioner or Secretary'' for ''the Secretary'' where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, § 311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, § 108(b)(5) in subsec. (d) as added by Pub. L. 103–296, § 311(a)(3), in par. (1) substituted ''Commissioner of Social Security'' for ''Secretary'' after ''records of the'', ''Commissioner'' for ''Secretary'' after ''from the'', ''Commissioner in consultation with the Secretary of Health and Human Services'' for ''Secretary'' after ''which the'', and in par. (2) and closing provisions substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, § 311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

[1] So in original. Probably should be subsection ''(f)''.

Subsec. (f). Pub. L. 103–296, §311(a)(1), (2), redesignated subsec. (e) as (f) and substituted ''subsection (e)'' for ''subsection (d)''.

1984—Subsec. (a). Pub. L. 98–369, §2663(*l*), substituted ''Secretary'' and ''Department of Health and Human Services'' for ''Administrator'' and ''Federal Security Agency'', respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, §2663(j)(2)(D)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (a). Pub. L. 97–35, §2207(1), substituted ''as otherwise provided by Federal law'' for ''as provided in part D of subchapter IV of this chapter''.

Subsec. (c). Pub. L. 97–35, §2207(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–647, §101(d)(1), inserted ''and except as provided in part D of subchapter IV of this chapter'' after ''may by regulations prescribe''.

Subsec. (b). Pub. L. 93–647, §101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, §101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to section 405 of this title and requirements for release of such information.

1972—Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968—Subsec. (c)(1). Pub. L. 90–248, §241(c)(1), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (c)(1)(A), (B). Pub. L. 90–248, §168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, §168(b)(1), substituted ''(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)'' for '', and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection''.

Subsec. (c)(3). Pub. L. 90–248, §168(b)(2), substituted ''authorized by subparagraph (A)(iv) or (B)'' for ''authorized by subparagraph (D)''.

1965—Subsec. (b). Pub. L. 89–97, §108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, §340, added subsec. (c).

1958—Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950—Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting ''under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act,'' reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Pub. L. 103–296, title III, §313(c), Aug. 15, 1994, 108 Stat. 1530, provided that: ''The amendments made by this section [amending this section and section 1307 of this title] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994].''

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.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title II, §249C(b), Oct. 30, 1972, 86 Stat. 1428, provided that: ''The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972].''

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, §618, 65 Stat. 569; Pub. L. 86–778, title VI, §603(a), Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–543, title I, §141(e), July 25, 1962, 76 Stat. 205.)

REFERENCES IN TEXT

Section 303(a)(3), referred to in text, was repealed by Pub. L. 97–35, title XXI, §2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92–603, §301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92–603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87–543 substituted ''XIV, or XVI (other than section 1383(a)(3) thereof)'' for ''or XIV''.

1960—Pub. L. 86–778 inserted ''(other than section 303(a)(3) thereof)'' after ''pursuant to subchapter I''.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86–778, title VI, §603(b), Sept. 13, 1960, 74 Stat. 992, provided that: ''The amendment made by sub-

section (a) [amending this section] shall take effect October 1, 1960.''

§ 1306b. State data exchanges

Whenever the Commissioner of Social Security requests information from a State for the purpose of ascertaining an individual's eligibility for benefits (or the correct amount of such benefits) under subchapter II or XVI of this chapter, the standards of the Commissioner promulgated pursuant to section 1306 of this title or any other Federal law for the use, safeguarding, and disclosure of information are deemed to meet any standards of the State that would otherwise apply to the disclosure of information by the State to the Commissioner.

(Pub. L. 106–169, title II, § 209, Dec. 14, 1999, 113 Stat. 1842.)

CODIFICATION

Section was enacted as part of the Foster Care Independence Act of 1999, and not as part of the Social Security Act which comprises this chapter.

§ 1306c. Restriction on access to the Death Master File

(a) In general

The Secretary of Commerce shall not disclose to any person information contained on the Death Master File with respect to any deceased individual at any time during the 3-calendar-year period beginning on the date of the individual's death, unless such person is certified under the program established under subsection (b).

(b) Certification program

(1) In general

The Secretary of Commerce shall establish a program—

(A) to certify persons who are eligible to access the information described in subsection (a) contained on the Death Master File, and

(B) to perform periodic and unscheduled audits of certified persons to determine the compliance by such certified persons with the requirements of the program.

(2) Certification

A person shall not be certified under the program established under paragraph (1) unless such person certifies that access to the information described in subsection (a) is appropriate because such person—

(A) has—

(i) a legitimate fraud prevention interest, or

(ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and

(B) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986, and

(C) agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.

(3) Fees

(A) In general

The Secretary of Commerce shall establish under section 9701 of title 31 a program for the charge of fees sufficient to cover (but not to exceed) all costs associated with evaluating applications for certification and auditing, inspecting, and monitoring certified persons under the program. Any fees so collected shall be deposited and credited as offsetting collections to the accounts from which such costs are paid.

(B) Report

The Secretary of Commerce shall report on an annual basis to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the total fees collected during the preceding year and the cost of administering the certification program under this subsection for such year.

(c) Imposition of penalty

(1) In general

Any person who is certified under the program established under subsection (b), who receives information described in subsection (a), and who during the period of time described in subsection (a)—

(A) discloses such information to any person other than a person who meets the requirements of subparagraphs (A), (B), and (C) of subsection (b)(2),

(B) discloses such information to any person who uses the information for any purpose not listed under subsection (b)(2)(A) or who further discloses the information to a person who does not meet such requirements, or

(C) uses any such information for any purpose not listed under subsection (b)(2)(A),

and any person to whom such information is disclosed who further discloses or uses such information as described in the preceding subparagraphs, shall pay a penalty of $1,000 for each such disclosure or use.

(2) Limitation on penalty

(A) In general

The total amount of the penalty imposed under this subsection on any person for any calendar year shall not exceed $250,000.

(B) Exception for willful violations

Subparagraph (A) shall not apply in the case of violations under paragraph (1) that the Secretary of Commerce determines to be willful or intentional violations.

(d) Death Master File

For purposes of this section, the term ''Death Master File'' means information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 405(r) of this title.

(e) Exemption from Freedom of Information Act requirement with respect to certain records of deceased individuals

(1) In general

No Federal agency shall be compelled to disclose the information described in subsection (a) to any person who is not certified under the program established under subsection (b).

(2) Treatment of information

For purposes of section 552 of title 5, this section shall be considered a statute described in subsection (b)(3) of such section 552.

(f) Effective date

(1) In general

Except as provided in paragraph (2), this section shall take effect on the date that is 90 days after December 26, 2013.

(2) FOIA exemption

Subsection (e) shall take effect on December 26, 2013.

(Pub. L. 113–67, div. A, title II, §203, Dec. 26, 2013, 127 Stat. 1177.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(B), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of the Bipartisan Budget Act of 2013, and not as part of the Social Security Act which comprises this chapter.

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the social security account number, date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Commissioner of Social Security or the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(Aug. 14, 1935, ch. 531, title XI, §1107, as added Aug. 10, 1939, ch. 666, title VIII, §802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, §403(e), (f), 64 Stat. 560; Pub. L. 98–369, div. B, title VI, §2663(e)(2)(A), (3), (j)(2)(D)(iii), (*l*)(1), July 18, 1984, 98 Stat. 1168, 1170, 1171; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(b)(6), title III, §313(b), Aug. 15, 1994, 108 Stat. 1482, 1530.)

REFERENCES IN TEXT

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296, §313(b), inserted ''social security account number,'' after ''information as to the'' and substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, §108(b)(6), which directed that subsec. (b) be amended by substituting ''the Commissioner of Social Security or the Secretary'' for ''the Secretary of Health and Human Services'', was executed by making the substitution for ''the Secretary'' to reflect the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–369, §2663(e)(2)(A), substituted ''of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939,'' for ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]''.

Subsec. (b). Pub. L. 98–369, §2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, §2663(j)(2)(D)(iii), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' could not be executed because ''Health, Education, and Welfare'' did not appear in text.

Pub. L. 98–369, §2663(e)(3), substituted ''divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,'' for ''former wife divorced,'' in two places.

1950—Subsec. (a). Act Aug. 28, 1950, §403(e), substituted ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939,'' for ''the Federal Insurance Contributions Act, or the Federal Unemployment Tax Act,''.

Subsec. (b). Act Aug. 28, 1950, §403(f), substituted ''Administrator'' for ''Board'' and ''wife, husband, widow, widower, former wife divorced, child, or parent'' for ''wife, parent, or child'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 313(b) of Pub. L. 103–296 applicable to violations occurring on or after Aug. 15, 1994, see section 313(c) of Pub. L. 103–296, set out as a note under section 1306 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title VI, § 2663(e)(2)(B), July 18, 1984, 98 Stat. 1168, provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (*l*)(1) of 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.

§ 1308. Additional grants to Puerto Rico, Virgin Islands, Guam, and American Samoa; limitation on total payments

(a) Limitation on total payments to each territory

(1) In general

Notwithstanding any other provision of this chapter (except for paragraph (2) of this subsection), the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.

(2) Certain payments disregarded

Paragraph (1) of this subsection shall be applied without regard to any payment made under section 603(a)(2), 603(a)(4), 603(a)(5), 606, or 613(f) of this title.

(b) Entitlement to matching grant

(1) In general

Each territory shall be entitled to receive from the Secretary for each fiscal year a grant in an amount equal to 75 percent of the amount (if any) by which—

(A) the total expenditures of the territory during the fiscal year under the territory programs funded under parts A and E of subchapter IV of this chapter, including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred; exceeds

(B) the sum of—

(i) the amount of the family assistance grant payable to the territory without regard to section 609 of this title; and

(ii) the total amount expended by the territory during fiscal year 1995 pursuant to parts A and F of subchapter IV of this chapter (as so in effect), other than for child care.

(2) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal year 2012, such sums as are necessary for grants under this paragraph.

(c) Definitions

As used in this section:

(1) Territory

The term ''territory'' means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) Ceiling amount

The term ''ceiling amount'' means, with respect to a territory and a fiscal year, the mandatory ceiling amount with respect to the territory, reduced for the fiscal year in accordance with subsection (e)[1] of this section, and reduced by the amount of any penalty imposed on the territory under any provision of law specified in subsection (a) of this section during the fiscal year.

(3) Family assistance grant

The term ''family assistance grant'' has the meaning given such term by section 603(a)(1)(B) of this title.

(4) Mandatory ceiling amount

The term ''mandatory ceiling amount'' means—

(A) $107,255,000 with respect to Puerto Rico;

(B) $4,686,000 with respect to Guam;

(C) $3,554,000 with respect to the Virgin Islands; and

(D) $1,000,000 with respect to American Samoa.

(5) Total amount expended by the territory

The term ''total amount expended by the territory''—

(A) does not include expenditures during the fiscal year from amounts made available by the Federal Government; and

(B) when used with respect to fiscal year 1995, also does not include—

(i) expenditures during fiscal year 1995 under subsection (g) or (i) of section 602 of this title (as in effect on September 30, 1995); or

(ii) any expenditures during fiscal year 1995 for which the territory (but for this section, as in effect on September 30, 1995) would have received reimbursement from the Federal Government.

(d) Authority to transfer funds to certain programs

A territory to which an amount is paid under subsection (b) of this section may use the amount in accordance with section 604(d) of this title.

(e) Repealed. Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619

(f) Total amount certified under subchapter XIX

Subject to subsection (g) of this section and section 1396u–5(e)(1)(B) of this title, the total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each

[1] See References in Text note below.

succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.

(g) Medicaid payments to territories for fiscal year 1998 and thereafter

(1) Fiscal year 1998

With respect to fiscal year 1998, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsection (f) of this section for such fiscal year shall be increased by the following amounts:

(A) For Puerto Rico, $30,000,000.

(B) For the Virgin Islands, $750,000.

(C) For Guam, $750,000.

(D) For the Northern Mariana Islands, $500,000.

(E) For American Samoa, $500,000.

(2) Fiscal year 1999 and thereafter

Notwithstanding subsection (f) of this section and subject to and section 18043(a)(2) of this title paragraphs (3) and (5),[2] with respect to fiscal year 1999 and any fiscal year thereafter, the total amount certified by the Secretary under subchapter XIX of this chapter for payment to—

(A) Puerto Rico shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase in the medical care component of the Consumer Price Index for all urban consumers (as published by the Bureau of Labor Statistics) for the 12-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(B) the Virgin Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(C) Guam shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;

(D) the Northern Mariana Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000; and

(E) American Samoa shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000.

(3) Fiscal years 2006 and 2007 for certain insular areas

The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for fiscal year 2006 and fiscal year 2007 shall be increased by the following amounts:

(A) For Puerto Rico, $12,000,000 for fiscal year 2006 and $12,000,000 for fiscal year 2007.

(B) For the Virgin Islands, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(C) For Guam, $2,500,000 for fiscal year 2006 and $5,000,000 for fiscal year 2007.

(D) For the Northern Mariana Islands, $1,000,000 for fiscal year 2006 and $2,000,000 for fiscal year 2007.

(E) For American Samoa, $2,000,000 for fiscal year 2006 and $4,000,000 for fiscal year 2007.

Such amounts shall not be taken into account in applying paragraph (2) for fiscal year 2007 but shall be taken into account in applying such paragraph for fiscal year 2008 and subsequent fiscal years.

(4) Exclusion of certain expenditures from payment limits

With respect to fiscal years beginning with fiscal year 2009, if Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa qualify for a payment under subparagraph (A)(i), (B), or (F) of section 1396b(a)(3) of this title for a calendar quarter of such fiscal year, the payment shall not be taken into account in applying subsection (f) (as increased in accordance with paragraphs (1), (2), (3), and (4) of this subsection) to such commonwealth or territory for such fiscal year.

(5) Additional increase

The Secretary shall increase the amounts otherwise determined under this subsection

[2] So in original. Probably should be ''Notwithstanding subsection (f) of this section and subject to paragraphs (3) and (5) and section 18043(a)(2) of this title,''.

for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa (after the application of subsection (f) and the preceding paragraphs of this subsection) for the period beginning July 1, 2011, and ending on September 30, 2019, by such amounts that the total additional payments under subchapter XIX to such territories equals $6,300,000,000 for such period. The Secretary shall increase such amounts in proportion to the amounts applicable to such territories under this subsection and subsection (f) on March 30, 2010.

(Aug. 14, 1935, ch. 531, title XI, § 1108, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558; amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Pub. L. 85–840, title V, §§ 507, 508, Aug. 28, 1958, 72 Stat. 1051; Pub. L. 86–778, title VI, § 602, Sept. 13, 1960, 74 Stat. 992; Pub. L. 87–31, § 6(a)(1), (2), (b), May 8, 1961, 75 Stat. 78; Pub. L. 87–64, title III, § 303(d), June 30, 1961, 75 Stat. 143; Pub. L. 87–543, title I, § 151, July 25, 1962, 76 Stat. 206; Pub. L. 89–97, title II, § 208(a)(2), title IV, § 408(a), July 30, 1965, 79 Stat. 355, 422; Pub. L. 90–248, title II, § 248(a)(1), Jan. 2, 1968, 81 Stat. 918; Pub. L. 92–603, title II, §§ 271(a), (b), 272(b), Oct. 30, 1972, 86 Stat. 1451; Pub. L. 93–647, § 3(i), Jan. 4, 1975, 88 Stat. 2350; Pub. L. 95–600, title VIII, § 802(b), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title II, § 207(c), title III, §§ 305(a), (b), June 17, 1980, 94 Stat. 526, 529, 530; Pub. L. 97–35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), Aug. 13, 1981, 95 Stat. 806, 827, 872; Pub. L. 97–248, title I, §§ 136(b), 160(a), Sept. 3, 1982, 96 Stat. 375, 400; Pub. L. 98–369, div. B, title III, § 2365(a), July 18, 1984, 98 Stat. 1108; Pub. L. 100–203, title IV, § 4111(a), Dec. 22, 1987, 101 Stat. 1330–148; Pub. L. 100–485, title II, § 202(c)(2), (3), title VI, §§ 601(b), (c)(2), 602(a), Oct. 13, 1988, 102 Stat. 2378, 2407, 2408; Pub. L. 103–66, title XIII, § 13641(a), Aug. 10, 1993, 107 Stat. 646; Pub. L. 104–193, title I, § 103(b), Aug. 22, 1996, 110 Stat. 2160; Pub. L. 105–33, title IV, § 4726, title V, §§ 5001(b), 5512, Aug. 5, 1997, 111 Stat. 519, 589, 619; Pub. L. 108–40, § 3(b), June 30, 2003, 117 Stat. 836; Pub. L. 108–173, title I, § 103(d)(2), Dec. 8, 2003, 117 Stat. 2159; Pub. L. 109–171, title VI, § 6055, Feb. 8, 2006, 120 Stat. 96; Pub. L. 111–3, title I, § 109, Feb. 4, 2009, 123 Stat. 25; Pub. L. 111–5, div. B, title II, § 2101(c), (d)(1), Feb. 17, 2009, 123 Stat. 449; Pub. L. 111–148, title II, § 2005(a), (b), title X, § 10201(d), Mar. 23, 2010, 124 Stat. 283, 919; Pub. L. 111–152, title I, § 1204(b)(1), (2)(A), Mar. 30, 2010, 124 Stat. 1056; Pub. L. 112–96, title IV, § 4002(h), Feb. 22, 2012, 126 Stat. 195.)

References in Text

Subsection (e) of this section, referred to in subsec. (c)(2), was repealed by Pub. L. 105–33, title V, § 5512(c), Aug. 5, 1997, 111 Stat. 619.

Amendments

2012—Subsec. (b)(2). Pub. L. 112–96 substituted ''fiscal year 2012'' for ''fiscal years 1997 through 2003''.

2010—Subsec. (g)(2). Pub. L. 111–152, § 1204(b)(1)(A), inserted ''and section 18043(a)(2) of this title'' after ''subject to'' in introductory provisions.

Pub. L. 111–148, § 2005(a)(1), substituted ''paragraphs (3) and (5)'' for ''paragraph (3)'' in introductory provisions.

Subsec. (g)(4). Pub. L. 111–148, § 2005(b), which directed substitution of ''to—'' for ''to'' and insertion of subpar. (A) designation before ''fiscal years beginning'' and ''(B) fiscal years beginning with fiscal year 2014, payments made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa with respect to amounts expended for medical assistance for newly eligible (as defined in section 1396d(y)(2) of this title) nonpregnant childless adults who are eligible under subclause (VIII) of section 1396a(a)(10)(A)(i) of this title and whose income (as determined under section 1396a(e)(14) of this title) does not exceed (in the case of each such commonwealth and territory respectively) the income eligibility level in effect for that population under subchapter XIX or under a waiver on March 23, 2010, shall not be taken into account in applying subsection (f) (as increased in accordance with paragraphs (1), (2), (3), and (5) of this subsection) to such commonwealth or territory for such fiscal year.'' at the end, was repealed by Pub. L. 111–152, § 1204(b)(2)(A). See Construction of 2010 Amendment note below.

Pub. L. 111–148, § 2005(a)(2), substituted ''(3), and (4)'' for ''and (3)''.

Subsec. (g)(4)(B). Pub. L. 111–148, § 10201(d), which directed amendment of subsec. (g)(4)(B) ''as added by section 2005(b)'' of Pub. L. 111–148 by substituting ''the highest income eligibility level in effect for parents under the commonwealth's or territory's State plan under subchapter XIX or under a waiver of the plan'' for ''income eligibility level in effect for that population under subchapter XIX or under a waiver'', was not executed in light of subsequent repeal of Pub. L. 111–148, § 2005(b), by Pub. L. 111–152, § 1204(b)(2)(A). See 2010 Amendment note above and Construction of 2010 Amendment note below.

Subsec. (g)(5). Pub. L. 111–152, § 1204(b)(1)(B), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: ''The amounts otherwise determined under this subsection for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa for the second, third, and fourth quarters of fiscal year 2011, and for each fiscal year after fiscal year 2011 (after the application of subsection (f) and the preceding paragraphs of this subsection), shall be increased by 30 percent.''

Pub. L. 111–148, § 2005(a)(3), added par. (5).

2009—Subsec. (a)(2). Pub. L. 111–5, § 2101(d)(1), struck out ''603(c)(3),'' after ''603(a)(5),''. See Effective Date of 2009 Amendment note below.

Pub. L. 111–5, § 2101(c), inserted ''603(c)(3),'' after ''603(a)(5),''.

Subsec. (g)(4). Pub. L. 111–3 added par. (4).

2006—Subsec. (g)(2). Pub. L. 109–171, § 6055(1), inserted ''and subject to paragraph (3)'' after ''subsection (f) of this section'' in introductory provisions.

Subsec. (g)(3). Pub. L. 109–171, § 6055(2), added par. (3).

2003—Subsec. (b)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

Subsec. (f). Pub. L. 108–173 inserted ''and section 1396u–5(e)(1)(B) of this title'' after ''Subject to subsection (g) of this section'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–33, § 5512(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Notwithstanding any other provision of this chapter, the total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, under parts A and E of subchapter IV of this chapter, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.''

Subsec. (a)(2). Pub. L. 105–33, § 5001(b), inserted ''603(a)(5),'' after ''603(a)(4),''.

Subsec. (b)(1)(A). Pub. L. 105–33, § 5512(b), inserted '', including any amount paid to the State under part A of subchapter IV of this chapter that is transferred in accordance with section 604(d) of this title and expended under the program to which transferred'' before semicolon.

Subsec. (e). Pub. L. 105–33, § 5512(c), struck out heading and text of subsec. (e). Text read as follows: ''The

ceiling amount with respect to a territory shall be reduced for a fiscal year by an amount equal to the amount (if any) by which—

''(1) the total amount expended by the territory under all programs of the territory operated pursuant to the provisions of law specified in subsection (a) of this section (as such provisions were in effect for fiscal year 1995) for fiscal year 1995; exceeds

''(2) the total amount expended by the territory under all programs of the territory that are funded under the provisions of law specified in subsection (a) of this section for the fiscal year that immediately precedes the fiscal year referred to in the matter preceding paragraph (1).''

Subsec. (f). Pub. L. 105–33, §4726(1), substituted ''Subject to subsection (g) of this section, the'' for ''The'' in introductory provisions.

Subsec. (g). Pub. L. 105–33, §4726(2), added subsec. (g).

1996—Pub. L. 104–193, §103(b)(3), added section catchline and struck out former catchline.

Subsecs. (a), (b). Pub. L. 104–193, §103(b)(3), added subsecs. (a) and (b) and struck out former subsec. (a) which limited total amount certified under subchapters I, X, XIV, XVI of this chapter and parts A and E of subchapter IV of this chapter for payment to Puerto Rico, the Virgin Islands, and Guam and former subsec. (b) which limited total amount certified for family planning services for Puerto Rico, the Virgin Islands, and Guam.

Subsec. (c). Pub. L. 104–193, §103(b)(3), added subsec. (c). Former subsec. (c) redesignated (f).

Subsecs. (d), (e). Pub. L. 104–193, §103(b)(1), (3), added subsecs. (d) and (e) and struck out former subsec. (d) which limited payments to American Samoa and former subsec. (e) which related to allotment of smaller amounts.

Subsec. (f). Pub. L. 104–193, §103(b)(2), redesignated subsec. (c) as (f).

1993—Subsec. (c)(1) to (5). Pub. L. 103–66 amended pars. (1) to (5) generally. Prior to amendment, pars. (1) to (5) read as follows:

''(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

''(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

''(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

''(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

''(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).''

1988—Pub. L. 100–485, §601(c)(2), amended section catchline generally.

Subsec. (a). Pub. L. 100–485, §202(c)(2), inserted ''or, in the case of part A of subchapter IV of this chapter, section 603(k) of this title'' before ''applies'' in introductory provisions.

Subsec. (a)(1)(F), (G). Pub. L. 100–485, §602(a)(1), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(2)(F), (G). Pub. L. 100–485, §602(a)(2), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(3)(F), (G). Pub. L. 100–485, §602(a)(3), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.''

Subsec. (b). Pub. L. 100–485, §202(c)(3), struck out ''and services provided under section 602(a)(19) of this title'' after ''family planning services'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 100–485, §601(b), added subsec. (d) and redesignated former subsec. (d) as (e).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

''(1) Puerto Rico shall not exceed $63,400,000;

''(2) the Virgin Islands shall not exceed $2,100,000;

''(3) Guam shall not exceed $2,000,000;

''(4) the Northern Mariana Islands shall not exceed $550,000; and

''(5) American Samoa shall not exceed $1,150,000.''

1984—Subsec. (c). Pub. L. 98–369 substituted ''$63,400,000'' for ''$45,000,000'' in par. (1), ''$2,100,000'' for ''$1,500,000'' in par. (2), ''$2,000,000'' for ''$1,400,000'' in par. (3), ''$550,000'' for ''$350,000'' in par. (4), and ''$1,150,000'' for ''$750,000'' in par. (5).

1982—Subsec. (a). Pub. L. 97–248, §160(a), inserted provisions following par. (3)(F) that each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.

Subsec. (c)(5). Pub. L. 97–248, §136(b), added par. (5).

1981—Subsec. (a). Pub. L. 97–35, §2353(f), substituted in provision preceding par. (1) ''The total amount certified by the Secretary of Health and Human Services'' for ''Except as provided in section 1397a(a)(2)(C) of this title, the total amount certified by the Secretary of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, §2162(b)(1), in par. (1) increased the amount from not to exceed $2,000,000 to not to exceed $45,000,000, in par. (2) increased the amount from not to exceed $65,000 to not to exceed $1,500,000, in par. (3) increased the amount from not to exceed $90,000 to not to exceed $1,400,000, and added par. (4).

Subsec. (d). Pub. L. 97–35, §2193(c)(1), substituted ''section 621 of this title'' for ''sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967''.

1980—Subsec. (a). Pub. L. 96–272 substituted ''section 1397a(a)(2)(C) of this title'' for ''section 1397a(a)(2)(D) of this title'' and ''under parts A and E'' for ''under part A'' in provisions preceding par. (1), substituted ''with respect to each of the fiscal years 1972 through 1978'' for ''with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979'' in pars. (1)(E), (2)(E), and (3)(E), and substituted ''with respect to the fiscal year 1979 and each fiscal year thereafter'' for ''with respect to the fiscal year 1979'' in pars. (1)(F), (2)(F), and (3)(F).

1978—Subsec. (a)(1)(E). Pub. L. 95–600, §802(b)(1)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(1)(F). Pub. L. 95–600, §802(b)(1)(C), added subpar. (F).

Subsec. (a)(2)(E). Pub. L. 95–600, §802(b)(2)(B), substituted ''other than the fiscal year 1979, or'' for ''; and''.

Subsec. (a)(2)(F). Pub. L. 95–600, §802(b)(2)(C), added subpar. (F).

Subsec. (a)(3)(E). Pub. L. 95–600, §802(b)(3)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(3)(F). Pub. L. 95–600, §802(b)(3)(C), added subpar. (F).

1975—Subsec. (a). Pub. L. 93–647 substituted ''Except as provided in section 1397a(a)(2)(D) of this title, the total amount'' for ''The total amount''.

1972—Subsec. (c)(1). Pub. L. 92–603, §271(a), substituted ''$30,000,000'' for ''$20,000,000''.

Subsec. (c)(2). Pub. L. 92–603, §271(b), substituted ''$1,000,000'' for ''$650,000''.

Subsec. (d). Pub. L. 92–603, §272(b), inserted '', American Samoa, and the Trust Territory of the Pacific Islands'' after ''allot such smaller amounts to Guam''.

1968—Pub. L. 90–248 amended section generally and, among other changes, raised the present $9.8 million

limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a)(19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $900,000 for Guam, and provided that notwithstanding sections 702(a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965—Pub. L. 89–97 substituted ''and 722(a)'' for ''722(a) and 727(a)'' and struck out ''(or, in the case of section 727(a) of this title'' after ''in lieu of the initial'', and removed the litigation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payments to Puerto Rico, $18,750 of the $330,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a)(2)(B) or 1383(a)(2)(B) of this title.

1962—Pub. L. 87–543 substituted ''$9,800,000'', ''$330,000'', ''$450,000'', and ''initial (or, in the case of section 727(a) of this title, the minimum) allotment'' for ''$9,500,000'', ''$320,000'', ''$430,000'', and ''$60,000, $60,000 $60,000, respectively,'' and inserted references to subchapter ''XVI (other than section 1383(a)(3) thereof)'' of this chapter, section 1383(a)(2) in three places and section 727(a) after section 722(a).

1961—Pub. L. 87–64, substituted ''$9,500,000'', ''$320,000'', and ''$430,000'' for ''$9,425,000'', ''$318,750'', and ''$425,000'', respectively. See Repeals note below.

Pub. L. 87–31 increased the grant to Puerto Rico for fiscal year ending June 30, 1961, from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962, to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $420,000 to $318,750 and $425,000, respectively; and payments under section 303(a)(2)(B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See also Limitation on Payments note below.

1960—Pub. L. 86–778 substituted ''$9,000,000, of which $500,000 may be used only for payments certified with respect to section 303(a)(2)(B) of this title'' for ''$8,500,000'', ''$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$300,000'', ''$420,000, of which $20,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$400,000'', and ''subchapters I (other than section 303(a)(3) thereof)'' for ''subchapters I''.

1958—Pub. L. 85–840, §§ 507, 508, amended section. Section 507(a) substituted ''$8,500,000'' for ''$5,312,500'' and ''$300,000'' for ''$200,000'', and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a)(2), 712(a)(2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1956—Act Aug. 1, 1956, substituted ''$5,312,500'' for ''$4,250,000'', and ''$200,000'' for ''$160,000''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title II, § 2101(d)(1), Feb. 17, 2009, 123 Stat. 449, provided that the amendment by section 2101(d)(1) of Pub. L. 111–5 is effective Oct. 1, 2010.

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective Oct. 1, 1996, see section 116(a)(3) of Pub. L. 104–193, set out as a note under section 601 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, § 13641(b), Aug. 10, 1993, 107 Stat. 647, provided that: ''The amendment made by subsection (a) [amending this section] shall apply beginning with fiscal year 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 202(c)(2), (3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as a note under section 671 of this title.

Amendment by section 601(b), (c)(2) of Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

Pub. L. 100–485, title VI, § 602(b), Oct. 13, 1988, 102 Stat. 2408, provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, § 4111(b), Dec. 22, 1987, 101 Stat. 1330–148, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for fiscal years beginning with fiscal year 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, § 2365(b), July 18, 1984, 98 Stat. 1108, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(b) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 160(a) of Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title XXI, § 2162(b)(2), Aug. 13, 1981, 95 Stat. 806, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1982.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(1) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Amendment by section 2353(f) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92–603, title II, §271(c), Oct. 30, 1972, 86 Stat. 1451, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1971.''

Amendment by section 272(b) of Pub. L. 92–603 applicable with respect to fiscal years beginning after June 30, 1971, see section 272(c) of Pub. L. 92–603, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–248, title II, §248(a)(2), Jan. 2, 1968, 81 Stat. 919, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(a)(2) Pub. L. 89–97 effective Jan. 1, 1966, see Pub. L. 89–97, title II, §208(d), July 30, 1965, 79 Stat. 356.

Pub. L. 89–97, title IV, §408(b), July 30, 1965, 79 Stat. 422, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of Puerto Rico, the Virgin Islands, or Guam with respect to fiscal years beginning on or after the date on which its plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] is approved.''

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–543, title I, §151, July 25, 1962, 76 Stat. 206, provided that the amendment made by that section is effective for fiscal years ending after June 30, 1962.

EFFECTIVE AND TERMINATION DATES OF 1961 AMENDMENT

Section 132(d) of Pub. L. 87–543 repealed section 303(d) of Pub. L. 87–64, which had provided that the amendment by section 303(d) of Pub. L. 87–64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub. L. 87–31, which had provided that the amendment by section 6(b) of Pub. L. 87–31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective with respect to fiscal years ending after 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments made by sections 507 and 508 of Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, title III, §351(d), 70 Stat. 855, provided that: ''The amendments made by this section [amending this section and sections 603 and 606 of this title] shall be effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years.''

REPEALS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6 of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, and section 303(d) of Pub. L. 87–64, title III, June 30, 1961, 75 Stat. 143, formerly cited as a credit to this section. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

LIMITATION ON PAYMENTS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6(a) of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, which had limited payments to Puerto Rico not to exceed $9,075,000 for fiscal year ending June 30, 1961, $9,425,000 for fiscal year ending June 30, 1962; and $9,125,000 for fiscal years ending after June 30, 1962. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

CONSTRUCTION OF 2010 AMENDMENT

Pub. L. 111–152, title I, §1204(b)(2)(A), Mar. 30, 2010, 124 Stat. 1056, repealed section 2005(b) of Pub. L. 111–148 and the amendments made by that subsection [amending this section] and provided that section 1108(g)(4) of the Social Security Act [42 U.S.C. 1308(g)(4)] shall be applied as if such amendments had never been enacted.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1309. Amounts disregarded not to be taken into account in determining eligibility of other individuals

Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter,[1] shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such subchapters.

(Aug. 14, 1935, ch. 531, title XI, §1109, as added July 18, 1952, ch. 945, §7, 66 Stat. 778; amended Pub. L. 87–543, title I, §141(c), July 25, 1962, 76 Stat. 205; Pub. L. 89–97, title I, §121(c)(2), July 30, 1965, 79 Stat. 352; Pub. L. 90–248, title II, §241(c)(2), Jan. 2, 1968, 81 Stat. 917; Pub. L. 104–193, title I, §108(g)(1), Aug. 22, 1996, 110 Stat. 2168.)

AMENDMENTS

1996—Pub. L. 104–193 struck out ''or part A of subchapter IV of this chapter,'' after ''subchapter I, X, XIV, XVI, or XIX of this chapter,''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

1965—Pub. L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals, for former provisions which had provided that: ''Notwithstanding the provisions of sections 302(a)(10)(A), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income

[1] So in original. The comma probably should not appear.

so disregarded (but not in excess of the amount specified in section 1202(a)(8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter''.

1962—Pub. L. 87–543 substituted reference to section 302(a)(10)(A) for 302(a)(7) and inserted references to section 1382(a)(14) and subchapter XVI.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

§ 1310. Cooperative research or demonstration projects

(a) In general

(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1), until the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter) obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3) Grants and payments under contracts or cooperative arrangements under paragraph (1) may be made either in advance or by way of reimbursement, as may be determined by the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter II or XVI of this chapter); and shall be made in such installments and on such conditions as the Secretary (or the Commissioner, as applicable) finds necessary to carry out the purposes of this subsection.

(b) Limitations and costs

(1) The Commissioner is authorized to waive any of the requirements, conditions, or limitations of subchapter XVI of this chapter (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as the Commissioner finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of such subchapter. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Commissioner from amounts available to the Commissioner for this purpose from appropriations made to carry out such subchapter. The costs of any such project which is carried out in coordination with one or more related projects under other subchapters of this chapter shall be allocated among the appropriations available for such projects and any Trust Funds involved, in a manner determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Commissioner requests a State to make supplementary payments (or the Commissioner makes them pursuant to an agreement under section 1382e of this title) to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments, the Commissioner shall reimburse such State for the non-Federal share of such payments from amounts appropriated to carry out subchapter XVI of this chapter. If, in order to carry out a project under this subsection, the Secretary requests a State to provide medical assistance under its plan approved under subchapter XIX of this chapter to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such assistance from amounts appropriated to carry out subchapter XVI of this chapter, which shall be provided by the Commissioner to the Secretary for this purpose.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Commissioner may not require any individual to participate in a project; and the Commissioner shall assure (i) that the voluntary participation of individuals in any

project is obtained through informed written consent which satisfies the requirements for informed consent established by the Commissioner for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

(D) the Commissioner shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

(c) Survey of use of payments

(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) of this section for fiscal year 2004, up to $8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under subchapter II or XVI of this chapter are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

(2) Not later than 18 months after March 2, 2004, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(Aug. 14, 1935, ch. 531, title XI, §1110, as added Aug. 1, 1956, ch. 836, title III, §331, 70 Stat. 850; amended Pub. L. 90–248, title II, §246, Jan. 2, 1968, 81 Stat. 918; Pub. L. 96–265, title V, §505(b), June 9, 1980, 94 Stat. 474; Pub. L. 98–369, div. B, title III, §2331(a), July 18, 1984, 98 Stat. 1088; Pub. L. 99–272, title XII, §12101(d), Apr. 7, 1986, 100 Stat. 283; Pub. L. 103–296, title I, §108(b)(7), Aug. 15, 1994, 108 Stat. 1482; Pub. L. 105–33, title V, §5524, Aug. 5, 1997, 111 Stat. 623; Pub. L. 106–170, title IV, §404(a), Dec. 17, 1999, 113 Stat. 1910; Pub. L. 108–203, title I, §107(a), Mar. 2, 2004, 118 Stat. 506.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–203 added subsec. (c).

1999—Subsec. (a)(3). Pub. L. 106–170 substituted ''subchapter II or XVI'' for ''subchapter XVI''.

1997—Subsec. (a)(3). Pub. L. 105–33 inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapter XVI of this chapter)'' after ''Secretary'' the first place appearing and ''(or the Commissioner, as applicable)'' after ''Secretary'' the second place appearing.

1994—Subsec. (a)(2). Pub. L. 103–296, §108(b)(7)(B), inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter)'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 103–296, §108(b)(7)(A), (C), in first sentence substituted ''The Commissioner'' for ''The Secretary'', ''as the Commissioner'' for ''as he'', and ''in the Commissioner's judgment'' for ''in his judgment'', in second sentence substituted ''by the Commissioner'' for ''by the Secretary'' and ''available to the Commissioner'' for ''available to him'', in third sentence substituted ''determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter,'' for ''determined by the Secretary,'', and substituted fourth and fifth sentences for former fourth sentence which read as follows: ''If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1382e of this title), or to provide medical assistance under its plan approved under subchapter XIX of this chapter, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out subchapter XVI of this chapter.''

Subsec. (b)(2). Pub. L. 103–296, §108(b)(7)(A), (D), substituted ''the Commissioner'' for ''the Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subpar. (B).

Subsec. (b)(3). Pub. L. 103–296, §108(b)(7)(E), struck out par. (3) which read as follows: ''All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 904 of this title.''

1986—Subsec. (b)(3). Pub. L. 99–272 added par. (3).

1984—Subsec. (a)(1)(A). Pub. L. 98–369 struck out ''nonprofit'' before first reference to ''organizations and agencies''.

1980—Pub. L. 96–265 redesignated provisions of subsec. (a) and cls. (1) and (2) thereof as subsec. (a)(1) and cls. (A) and (B) thereof, respectively, redesignated provisions of subsecs. (b) and (c) as subsec. (a)(2) and (3), respectively, added subsec. (b), and made conforming amendments to subsec. (a)(2) and (3) as redesignated.

1968—Subsec. (a). Pub. L. 90–248 struck out ''nonprofit'' before ''organizations'' in cl. (2).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title IV, §404(b), Dec. 17, 1999, 113 Stat. 1910, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103–296, see section 5528(b) of Pub. L. 105–33, set out as a note under section 903 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, §2331(c), July 18, 1984, 98 Stat. 1088, provided that: ''The amendments made by

this section [amending this section and section 1395b–1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS

Pub. L. 101–508, title V, § 5120(a)–(e), Nov. 5, 1990, 104 Stat. 1388–280, directed Secretary of Health and Human Services to develop and carry out under this section demonstration projects in each of not fewer than three States, with such demonstration projects to be designed to assess the advantages and disadvantages of permitting disabled beneficiaries to select from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activities, with each such demonstration project to commence as soon as practicable after Nov. 5, 1990, and to remain in operation until the end of fiscal year 1993, and with a final written report to be submitted to Congress not later than Apr. 1, 1994.

FINAL REPORT COVERING ALL EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 96–265, title V, § 505(c), June 9, 1980, 94 Stat. 475, as amended by Pub. L. 99–272, title XII, § 12101(c), Apr. 7, 1986, 100 Stat. 283; Pub. L. 101–239, title X, § 10103(a)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title V, § 5120(f), Nov. 5, 1990, 104 Stat. 1388–282; Pub. L. 103–296, title I, § 108(m)(3), title III, § 315(a)(3), Aug. 15, 1994, 108 Stat. 1489, 1531, which directed Commissioner to submit to Congress final report with respect to all experiments and demonstration projects carried out under section 505 of Pub. L. 96–265, which amended this section and section 401 of this title and enacted provisions formerly set out below (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990, Pub. L. 101–508, set out above) no later than Oct. 1, 1996, was repealed by Pub. L. 106–170, title III, § 301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

AUTHORITY FOR DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Pub. L. 96–265, title V, § 505(a)(1)–(4), June 9, 1980, 94 Stat. 473, as amended by Pub. L. 99–272, title XII, § 12101(a), (b), Apr. 7, 1986, 100 Stat. 282; Pub. L. 101–239, title X, § 10103(a)(1), (2), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 103–296, title I, § 108(m), title III, § 315(a)(1), (2), Aug. 15, 1994, 108 Stat. 1489, 1531, which authorized Commissioner of Social Security to carry out demonstration projects to determine advantages and disadvantages of alternative methods of treating work activity of disabled beneficiaries under the old age, survivors, and disability insurance program and altering limitations and conditions applicable to such disabled beneficiaries, and required report to Congress on or before June 9, 1986, and in each succeeding year through 1995, was repealed by Pub. L. 106–170, title III, § 301(b)(1)(A), Dec. 17, 1999, 113 Stat. 1902.

Pub. L. 106–170, title III, § 301(b)(2), Dec. 17, 1999, 113 Stat. 1902, provided that: ''With respect to any experiment or demonstration project being conducted under section 505(a) of the Social Security Disability Amendments of 1980 [Pub. L. 96–265, formerly set out above] (42 U.S.C. 1310 note) as of the date of the enactment of this Act [Dec. 17, 1999], the authority to conduct such experiment or demonstration project (including the terms and conditions applicable to the experiment or demonstration project) shall be treated as if that authority (and such terms and conditions) had been established under section 234 of the Social Security Act [42 U.S.C. 434], as added by subsection (a).''

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

(Aug. 14, 1935, ch. 531, title XI, § 1111, as added Pub. L. 85–840, title V, § 511(a), Aug. 28, 1958, 72 Stat. 1051; amended Pub. L. 87–543, title I, § 141(d), July 25, 1962, 76 Stat. 205; Pub. L. 90–248, title II, § 241(c)(3), Jan. 2, 1968, 81 Stat. 917.)

AMENDMENTS

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

1962—Pub. L. 87–543 inserted reference to subchapter XVI.

EFFECTIVE DATE

Pub. L. 85–840, title V, § 511(b), Aug. 28, 1958, 72 Stat. 1052, provided that: ''The amendment made by subsection (a) [enacting this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958; and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare [now Health and Human Services] with respect thereto, or such State has presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959.''

§ 1312. Medical care guides and reports for public assistance and medical assistance

In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1112, as added Pub. L. 86–778, title VII, § 705, Sept. 13, 1960, 74 Stat. 995; amended Pub. L. 89–97, title IV, § 408(c), July 30, 1965, 79 Stat. 422.)

AMENDMENTS

1965—Pub. L. 89–97 struck out ''for the aged'' after ''medical assistance''.

§ 1313. Assistance for United States citizens returned from foreign countries

(a) Authorization; reimbursement; utilization of facilities of public or private agencies and organizations

(1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) Plans and arrangements for assistance; consultations

The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1) of this section. Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) of this section shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) "Temporary assistance" defined

For purposes of this section, the term ''temporary assistance'' means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case.

(d) Maximum total amount of temporary assistance

The total amount of temporary assistance provided under this section shall not exceed $1,000,000 during any fiscal year beginning after September 30, 2009, except that, in the case of fiscal year 2010, the total amount of such assistance provided during that fiscal year shall not exceed $25,000,000.

(e) Authority of Secretary to accept gifts

(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.

(Aug. 14, 1935, ch. 531, title XI, § 1113, as added Pub. L. 87–64, title III, § 302, June 30, 1961, 75 Stat. 142; amended Pub. L. 87–543, title I, § 133, July 25, 1962, 76 Stat. 196; Pub. L. 88–347, June 30, 1964, 78 Stat. 236; Pub. L. 90–36, § 2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title V, § 503, Jan. 2, 1968, 81 Stat. 934; Pub. L. 91–41, § 4, July 9, 1969, 83 Stat. 45; Pub. L. 92–40, July 1, 1971, 85 Stat. 96; Pub. L. 94–44, §§ 1, 2, June 28, 1975, 89 Stat. 235; Pub. L. 101–382, title I, § 140, Aug. 20, 1990, 104 Stat. 654; Pub. L. 101–508, title V, § 5056(a), Nov. 5, 1990, 104 Stat. 1388–229; Pub. L. 108–11, title I, § 1701, Apr. 16, 2003, 117 Stat. 585; Pub. L. 109–250, § 1(a), July 27, 2006, 120 Stat. 652; Pub. L. 111–127, § 2, Jan. 27, 2010, 124 Stat. 4.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–127, which directed substitution of ''September 30, 2009, except that, in the case of fiscal year 2010, the total amount of such assistance provided during that fiscal year shall not exceed $25,000,000.'' for ''September, 30, 2003'' and all that follows through the end of subsec. (d), was executed by making the substitution for ''September 30, 2003, except that, in the case of fiscal year 2006, the total amount of such assistance provided during that fiscal year shall not exceed $6,000,000.'', which did not contain a comma after ''September'', to reflect the probable intent of Congress.

2006—Subsec. (d). Pub. L. 109–250 inserted '', except that, in the case of fiscal year 2006, the total amount of such assistance provided during that fiscal year shall not exceed $6,000,000'' after ''2003''.

2003—Subsec. (d). Pub. L. 108–11 substituted ''2003'' for ''1991''.

1990—Subsec. (d). Pub. L. 101–508, § 5056(a)(1), substituted ''after September 30, 1991'' for ''on or after October 1, 1989''.

Pub. L. 101–382 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The total amount of temporary assistance provided under this section shall not exceed—

''(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

''(2) $300,000 during any fiscal year beginning on or after October 1, 1976.''

Subsec. (e). Pub. L. 101–508, § 5056(a)(2), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–44, § 2, set a 90-day limit for assistance following arrival in the United States with provision for furnishing of assistance beyond the 90-day limit upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance in that particular case.

Subsec. (d). Pub. L. 94–44, § 1, substituted provisions setting the maximum total amount of temporary as-

sistance provided under this section for provisions prohibiting temporary assistance after June 30, 1973.

1971—Subsec. (d). Pub. L. 92–40 extended termination date from June 30, 1971, to June 30, 1973.

1969—Subsec. (d). Pub. L. 91–41 extended termination date from June 30, 1969, to June 30, 1971.

1968—Subsec. (d). Pub. L. 90–248 extended termination date from June 30, 1968, to June 30, 1969.

1967—Subsec. (d). Pub. L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

1964—Subsec. (d). Pub. L. 88–347 extended termination date from June 30, 1964, to June 30, 1967.

1962—Subsec. (d). Pub. L. 87–543 extended termination date from June 30, 1962, to June 30, 1964.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title V, § 5056(b), Nov. 5, 1990, 104 Stat. 1388–230, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for fiscal years beginning after September 30, 1989.''

§ 1314. Public advisory groups

(a) Advisory Council on Public Welfare; appointment and functions of initial Council

The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this chapter and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) Membership and representation of interests on initial Council

The Council shall be appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

(d) Termination of initial Council's existence on submission of report

The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of this chapter) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) Succeeding Councils; appointment; functions; membership; representation of interests; assistance and data; termination

The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d) of this section, not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) Advisory committees; functions; reports by Secretary

The Secretary may also appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203, 205, and 209 of title 18, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(Aug. 14, 1935, ch. 531, title XI, § 1114, as added Pub. L. 87–543, title I, § 121, July 25, 1962, 76 Stat. 190; amended Pub. L. 90–248, title IV, § 403(e), Jan. 2, 1968, 81 Stat. 932; Pub. L. 98–369, div. B, title VI, § 2663(e)(4), (j)(2)(D)(iv), July 18, 1984, 98 Stat. 1168, 1170; Pub. L. 106–554, § 1(a)(6) [title V, § 522(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–546; Pub. L. 108–173, title IX, § 948(a)(1)(A), Dec. 8, 2003, 117 Stat. 2425.)

AMENDMENTS

2003—Subsec. (i). Pub. L. 108–173 redesignated and transferred subsec. (i) of this section to subsec. (j) of section 1395y of this title.

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i).

1984—Subsec. (c). Pub. L. 98–369, § 2663(j)(2)(D)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g). Pub. L. 98–369, § 2663(e)(4)(A), made technical correction of typographical error resulting in no change in text.

Subsec. (h)(1). Pub. L. 98–369, § 2663(e)(4)(B), substituted ''sections 203, 205, and 209 of title 18'' for ''sections 281, 283, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)''.

1968—Subsecs. (b), (f). Pub. L. 90–248, § 403(e)(1), (2), substituted ''provisions of title 5, governing appointments in the competitive service'' for ''civil-service laws''.

Subsec. (g). Pub. L. 90–248, § 403(e)(3), substituted ''section 5703 of title 5'' for ''section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 948(e), Dec. 8, 2003, 117 Stat. 2426, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and sections 1320c–3, 1395w–22, 1395y, and 1395ff of this title] shall be effective as if included in the enactment of BIPA [the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Public Law 106–554].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 522(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–547, provided that: ''The amendments made by this section [amending this section and sections 1395y and 1395ff of this title] shall apply with respect to—

''(1) a review of any national or local coverage determination filed,

''(2) a request to make such a determination made, and

''(3) a national coverage determination made,

on or after October 1, 2001.''

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.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1314a. Measurement and reporting of welfare receipt

(a) Congressional policy

The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and that the life prospects of children are improved, and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare receipt to improve their education and job skills, to obtain child care and other necessary support services, and to take such other steps as may be necessary to assist them to become financially independent; and

(4) it is the purpose of this section to provide the public with generally accepted measures of welfare receipt so that it can track such receipt over time and determine whether progress is being made in reducing the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt.

(b) Development of welfare indicators and predictors

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') in consultation with the Secretary of Agriculture shall—

(1) develop—

(A) indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) predictors of welfare receipt;

(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(3) not later than 2 years after October 31, 1994, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—

(A) the Committee on Ways and Means of the House of Representatives;

(B) the Committee on Education and Labor of the House of Representatives;

(C) the Committee on Agriculture of the House of Representatives;

(D) the Committee on Commerce of the House of Representatives;

(E) the Committee on Finance of the Senate;

(F) the Committee on Labor and Human Resources of the Senate; and

(G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) Advisory Board on Welfare Indicators

(1) Establishment

There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the ''Board'').

(2) Composition

The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) Vacancies

Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) Duties

Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) providing advice on the development and presentation of annual reports required under subsection (d) of this section.

(5) Travel expenses

Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) Detail of Federal employees

The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) Voluntary service

Notwithstanding section 1342 of title 31, the Board may accept the voluntary services provided by a member of the Board.

(8) Termination of Board

The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d) of this section.

(d) Annual welfare indicators report

(1) Preparation

The Secretary shall prepare annual reports on welfare receipt in the United States.

(2) Coverage

The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of subchapter IV of this chapter, the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under subchapter XVI of this chapter, or as general assistance under programs administered by State and local governments.

(3) Contents

Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—

(A) indicators of—

(i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and

(ii) the duration of welfare receipt;

(B) trends in indicators;

(C) predictors of welfare receipt;

(D) the causes of welfare receipt;

(E) patterns of multiple program receipt;

(F) such other information as the Secretary deems relevant; and

(G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—

(i) the rate at which and the degree to which families depend on income from welfare programs, and

(ii) the duration of welfare receipt.

(4) Submission

The Secretary shall submit such a report not later than 3 years after October 31, 1994, and annually thereafter, to the committees specified in subsection (b)(3) of this section. Each such report shall be transmitted during the first 60 days of each regular session of Congress.

(e) Short title

This section may be cited as the ''Welfare Indicators Act of 1994''.

(Pub. L. 103–432, title II, § 232, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 105–200, title IV, § 410(h), July 16, 1998, 112 Stat. 674; Pub. L. 110–234, title IV, § 4002(b)(1)(A), (B), (2)(X), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(A), (B), (2)(X), June 18, 2008, 122 Stat. 1664, 1857, 1859.)

REFERENCES IN TEXT

The Food and Nutrition Act of 2008, referred to in subsec. (d)(2), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat.

703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

Section was enacted as part of the Social Security Act Amendments of 1994, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

2008—Subsec. (d)(2). Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(X), substituted ''supplemental nutrition assistance program'' for ''food stamp program'' and ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

1998—Subsec. (b)(3)(D). Pub. L. 105–200, § 410(h)(1), struck out ''Energy and'' before ''Commerce''.

Subsec. (d)(4). Pub. L. 105–200, § 410(h)(2), substituted ''subsection (b)(3) of this section'' for ''subsection (b)(3)(C) of this section''.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(X) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

§ 1314b. National Advisory Committee on the Sex Trafficking of Children and Youth in the United States

(a) Official designation

This section relates to the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (in this section referred to as the ''Committee'').

(b) Authority

Not later than 2 years after September 29, 2014, the Secretary shall establish and appoint all members of the Committee.

(c) Membership

(1) Composition

The Committee shall be composed of not more than 21 members whose diverse experience and background enable them to provide balanced points of view with regard to carrying out the duties of the Committee.

(2) Selection

The Secretary, in consultation with the Attorney General and National Governors Association, shall appoint the members to the Committee. At least 1 Committee member shall be a former sex trafficking victim. 2 Committee members shall be a Governor of a State, 1 of whom shall be a member of the Democratic Party and 1 of whom shall be a member of the Republican Party.

(3) Period of appointment; vacancies

Members shall be appointed for the life of the Committee. A vacancy in the Committee shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Committee.

(4) Compensation

Committee members shall serve without compensation or per diem in lieu of subsistence.

(d) Duties

(1) National response

The Committee shall advise the Secretary and the Attorney General on practical and general policies concerning improvements to the Nation's response to the sex trafficking of children and youth in the United States.

(2) Policies for cooperation

The Committee shall advise the Secretary and the Attorney General on practical and general policies concerning the cooperation of Federal, State, local, and tribal governments, child welfare agencies, social service providers, physical health and mental health providers, victim service providers, State or local courts with responsibility for conducting or supervising proceedings relating to child welfare or social services for children and their families, Federal, State, and local police, juvenile detention centers, and runaway and homeless youth programs, schools, the gaming and entertainment industry, and businesses and organizations that provide services to youth, on responding to sex trafficking, including the development and implementation of—

(A) successful interventions with children and youth who are exposed to conditions that make them vulnerable to, or victims of, sex trafficking; and

(B) recommendations for administrative or legislative changes necessary to use programs, properties, or other resources owned, operated, or funded by the Federal Government to provide safe housing for children and youth who are sex trafficking victims and provide support to entities that provide housing or other assistance to the victims.

(3) Best practices and recommendations for States

(A) In general

Within 2 years after the establishment of the Committee, the Committee shall develop 2 tiers (referred to in this subparagraph as ''Tier I'' and ''Tier II'') of recommended best practices for States to follow in combating the sex trafficking of children and youth. Tier I shall provide States that have not yet substantively addressed the sex trafficking of children and youth with an idea of where to begin and what steps to take. Tier II shall

provide States that are already working to address the sex trafficking of children and youth with examples of policies that are already being used effectively by other States to address sex trafficking.

(B) Development

The best practices shall be based on multidisciplinary research and promising, evidence-based models and programs as reflected in State efforts to meet the requirements of sections 101 and 102 of the Preventing Sex Trafficking and Strengthening Families Act.

(C) Content

The best practices shall be user-friendly, incorporate the most up-to-date technology, and include the following:

(i) Sample training materials, protocols, and screening tools that, to the extent possible, accommodate for regional differences among the States, to prepare individuals who administer social services to identify and serve children and youth who are sex trafficking victims or at-risk of sex trafficking.

(ii) Multidisciplinary strategies to identify victims, manage cases, and improve services for all children and youth who are at risk of sex trafficking, or are sex trafficking victims, in the United States.

(iii) Sample protocols and recommendations based on current States' efforts, accounting for regional differences between States that provide for effective, cross-system collaboration between Federal, State, local, and tribal governments, child welfare agencies, social service providers, physical health and mental health providers, victim service providers, State or local courts with responsibility for conducting or supervising proceedings relating to child welfare or social services for children and their families, the gaming and entertainment industry, Federal, State, and local police, juvenile detention centers and runaway and homeless youth programs, housing resources that are appropriate for housing child and youth victims of trafficking, schools, and businesses and organizations that provide services to children and youth. These protocols and recommendations should include strategies to identify victims and collect, document, and share data across systems and agencies, and should be designed to help agencies better understand the type of sex trafficking involved, the scope of the problem, the needs of the population to be served, ways to address the demand for trafficked children and youth and increase prosecutions of traffickers and purchasers of children and youth, and the degree of victim interaction with multiple systems.

(iv) Developing the criteria and guidelines necessary for establishing safe residential placements for foster children who have been sex trafficked as well as victims of trafficking identified through interaction with law enforcement.

(v) Developing training guidelines for caregivers that serve children and youth being cared for outside the home.

(D) Informing States of best practices

The Committee, in coordination with the National Governors Association, Secretary and Attorney General, shall ensure that State Governors and child welfare agencies are notified and informed on a quarterly basis of the best practices and recommendations for States, and notified 6 months in advance that the Committee will be evaluating the extent to which States adopt the Committee's recommendations.

(E) Report on State implementation

Within 3 years after the establishment of the Committee, the Committee shall submit to the Secretary and the Attorney General, as part of its final report as well as for online and publicly available publication, a description of what each State has done to implement the recommendations of the Committee.

(e) Reports

(1) In general

The Committee shall submit an interim and a final report on the work of the Committee to—

(A) the Secretary;

(B) the Attorney General;

(C) the Committee on Finance of the Senate; and

(D) the Committee on Ways and Means of the House of Representatives.

(2) Reporting dates

The interim report shall be submitted not later than 3 years after the establishment of the Committee. The final report shall be submitted not later than 4 years after the establishment of the Committee.

(f) Administration

(1) Agency support

The Secretary shall direct the head of the Administration for Children and Families of the Department of Health and Human Services to provide all necessary support for the Committee.

(2) Meetings

(A) In general

The Committee will meet at the call of the Secretary at least twice each year to carry out this section, and more often as otherwise required.

(B) Accommodation for Committee members unable to attend in person

The Secretary shall create a process through which Committee members who are unable to travel to a Committee meeting in person may participate remotely through the use of video conference, teleconference, online, or other means.

(3) Subcommittees

The Committee may establish subcommittees or working groups, as necessary and consistent with the mission of the Committee.

The subcommittees or working groups shall have no authority to make decisions on behalf of the Committee, nor shall they report directly to any official or entity listed in subsection (d).

(4) Recordkeeping

The records of the Committee and any subcommittees and working groups shall be maintained in accordance with appropriate Department of Health and Human Services policies and procedures and shall be available for public inspection and copying, subject to the Freedom of Information Act (5 U.S.C. 552).

(g) Termination

The Committee shall terminate 5 years after the date of its establishment, but the Secretary shall continue to operate and update, as necessary, an Internet website displaying the State best practices, recommendations, and evaluation of State-by-State implementation of the Secretary's recommendations.

(h) Definition

For the purpose of this section, the term ''sex trafficking'' includes the definition set forth in section 7102(10) of title 22 and ''severe form of trafficking in persons'' described in section 7102(9)(A) of title 22.

(Aug. 14, 1935, ch. 531, title XI, §1114A, as added Pub. L. 113–183, title I, §121, Sept. 29, 2014, 128 Stat. 1931.)

REFERENCES IN TEXT

Sections 101 and 102 of the Preventing Sex Trafficking and Strengthening Families Act, referred to in subsec. (d)(3)(B), are sections 101 and 102 of Pub. L. 113–183. Section 101 amended sections 671 and 675 of this title. Section 102 amended section 671 of this title.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2)(A) costs of such project which would not otherwise be included as expenditures under section 303, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate, and

(B) costs of such project which would not otherwise be a permissible use of funds under part A of subchapter IV of this chapter and which are not included as part of the costs of projects under section 1310 of this title, shall to the extent and for the period prescribed by the Secretary, be regarded as a permissible use of funds under such part.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b) Child support enforcement programs

(1) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV, the project—

(A) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(B) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(C) must not result in increased cost to the Federal Government under part A of such subchapter.

(2) An Indian tribe or tribal organization operating a program under section 655(f) of this title shall be considered a State for purposes of authority to conduct an experimental, pilot, or demonstration project under subsection (a) to assist in promoting the objectives of part D of subchapter IV and receiving payments under the second sentence of that subsection. The Secretary may waive compliance with any requirements of section 655(f) of this title or regulations promulgated under that section to the extent and for the period the Secretary finds necessary for an Indian tribe or tribal organization to carry out such project. Costs of the project which would not otherwise be included as expenditures of a program operating under section 655(f) of this title and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under a tribal plan or plans approved under such section, or for the administration of such tribal plan or plans, as may be appropriate. An Indian tribe or tribal organization applying for or receiving start-up program development funding pursuant to section 309.16 of title 45, Code of Federal Regulations, shall not be considered to be an Indian tribe or tribal organization operating a program under section 655(f) of this title for purposes of this paragraph.

(c) Demonstration projects to test alternative definitions of unemployment

(1)(A) The Secretary shall enter into agreements with up to 8 States submitting applications under this subsection for the purpose of conducting demonstration projects in such

States to test and evaluate the use, with respect to individuals who received aid under part A of subchapter IV of this chapter in the preceding month (on the basis of the unemployment of the parent who is the principal earner), of a number greater than 100 for the number of hours per month that such individuals may work and still be considered to be unemployed for purposes of section 607 of this title. If any State submits an application under this subsection for the purpose of conducting a demonstration project to test and evaluate the total elimination of the 100-hour rule, the Secretary shall approve at least one such application.

(B) If any State with an agreement under this subsection so requests, the demonstration project conducted pursuant to such agreement may test and evaluate the complete elimination of the 100-hour rule and of any other durational standard that might be applied in defining unemployment for purposes of determining eligibility under section 607 of this title.

(2) Notwithstanding section 602(a)(1) of this title, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated under section 602(a)(3) of this title. Such agreement shall provide for the payment of aid under the applicable State plan under part A of subchapter IV of this chapter as though section 607 of this title had been modified to reflect the definition of unemployment used in the demonstration project but shall also provide that such project shall otherwise be carried out in accordance with all of the requirements and conditions of section 607 of this title (and, except as provided in paragraph (2), any related requirements and conditions under part A of subchapter IV of this chapter).

(4) A demonstration project under this subsection may be commenced any time after September 30, 1990, and shall be conducted for such period of time as the agreement with the Secretary may provide; except that, in no event may a demonstration project under this section be conducted after September 30, 1995.

(5)(A) Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 607 of this title and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to the Congress not later than 6 months after all such projects are completed.

(d) Regulations relating to applications for or renewals of demonstration projects

(1) An application or renewal of any experimental, pilot, or demonstration project undertaken under subsection (a) to promote the objectives of subchapter XIX or XXI in a State that would result in an impact on eligibility, enrollment, benefits, cost-sharing, or financing with respect to a State program under subchapter XIX or XXI (in this subsection referred to as a ''demonstration project'') shall be considered by the Secretary in accordance with the regulations required to be promulgated under paragraph (2).

(2) Not later than 180 days after March 23, 2010, the Secretary shall promulgate regulations relating to applications for, and renewals of, a demonstration project that provide for—

(A) a process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input;

(B) requirements relating to—

(i) the goals of the program to be implemented or renewed under the demonstration project;

(ii) the expected State and Federal costs and coverage projections of the demonstration project; and

(iii) the specific plans of the State to ensure that the demonstration project will be in compliance with subchapter XIX or XXI;

(C) a process for providing public notice and comment after the application is received by the Secretary, that is sufficient to ensure a meaningful level of public input;

(D) a process for the submission to the Secretary of periodic reports by the State concerning the implementation of the demonstration project; and

(E) a process for the periodic evaluation by the Secretary of the demonstration project.

(3) The Secretary shall annually report to Congress concerning actions taken by the Secretary with respect to applications for demonstration projects under this section.

(e) Extensions of State-wide comprehensive demonstration projects for which waivers granted

(1) The provisions of this subsection shall apply to the extension of any State-wide comprehensive demonstration project (in this subsection referred to as ''waiver project'') for which a waiver of compliance with requirements of subchapter XIX of this chapter is granted under subsection (a) of this section.

(2) During the 6-month period ending 1 year before the date the waiver under subsection (a) of this section with respect to a waiver project would otherwise expire, the chief executive officer of the State which is operating the project may submit to the Secretary a written request for an extension, of up to 3 years (5 years, in the case of a waiver described in section 1396n(h)(2) of this title), of the project.

(3) If the Secretary fails to respond to the request within 6 months after the date it is submitted, the request is deemed to have been granted.

(4) If such a request is granted, the deadline for submittal of a final report under the waiver project is deemed to have been extended until the date that is 1 year after the date the waiver project would otherwise have expired.

(5) The Secretary shall release an evaluation of each such project not later than 1 year after the date of receipt of the final report.

(6) Subject to paragraphs (4) and (7), the extension of a waiver project under this subsection shall be on the same terms and conditions (including applicable terms and conditions relating to quality and access of services, budget neutrality, data and reporting requirements, and special population protections) that applied to the project before its extension under this subsection.

(7) If an original condition of approval of a waiver project was that Federal expenditures under the project not exceed the Federal expenditures that would otherwise have been made, the Secretary shall take such steps as may be necessary to ensure that, in the extension of the project under this subsection, such condition continues to be met. In applying the previous sentence, the Secretary shall take into account the Secretary's best estimate of rates of change in expenditures at the time of the extension.

(f) Application for extension of waiver project; submission; approval

An application by the chief executive officer of a State for an extension of a waiver project the State is operating under an extension under subsection (e) of this section (in this subsection referred to as the ''waiver project'') shall be submitted and approved or disapproved in accordance with the following:

(1) The application for an extension of the waiver project shall be submitted to the Secretary at least 120 days prior to the expiration of the current period of the waiver project.

(2) Not later than 45 days after the date such application is received by the Secretary, the Secretary shall notify the State if the Secretary intends to review the terms and conditions of the waiver project. A failure to provide such notification shall be deemed to be an approval of the application.

(3) Not later than 45 days after the date a notification is made in accordance with paragraph (2), the Secretary shall inform the State of proposed changes in the terms and conditions of the waiver project. A failure to provide such information shall be deemed to be an approval of the application.

(4) During the 30-day period that begins on the date information described in paragraph (3) is provided to a State, the Secretary shall negotiate revised terms and conditions of the waiver project with the State.

(5)(A) Not later than 120 days after the date an application for an extension of the waiver project is submitted to the Secretary (or such later date agreed to by the chief executive officer of the State), the Secretary shall—

(i) approve the application subject to such modifications in the terms and conditions—

(I) as have been agreed to by the Secretary and the State; or

(II) in the absence of such agreement, as are determined by the Secretary to be reasonable, consistent with the overall objectives of the waiver project, and not in violation of applicable law; or

(ii) disapprove the application.

(B) A failure by the Secretary to approve or disapprove an application submitted under this subsection in accordance with the requirements of subparagraph (A) shall be deemed to be an approval of the application subject to such modifications in the terms and conditions as have been agreed to (if any) by the Secretary and the State.

(6) An approval of an application for an extension of a waiver project under this subsection shall be for a period not to exceed 3 years (5 years, in the case of a waiver described in section 1396n(h)(2) of this title).

(7) An extension of a waiver project under this subsection shall be subject to the final reporting and evaluation requirements of paragraphs (4) and (5) of subsection (e) of this section (taking into account the extension under this subsection with respect to any timing requirements imposed under those paragraphs).

(Aug. 14, 1935, ch. 531, title XI, §1115, as added Pub. L. 87–543, title I, §122, July 25, 1962, 76 Stat. 192; amended Pub. L. 89–97, title I, §121(c)(3), July 30, 1965, 79 Stat. 352; Pub. L. 90–36, §2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title II, §§241(c)(4), 247, Jan. 2, 1968, 81 Stat. 917, 918; Pub. L. 93–233, §18(z–2)(1)(B), Dec. 31, 1973, 87 Stat. 973; Pub. L. 93–647, §3(c), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 95–216, title IV, §404, Dec. 20, 1977, 91 Stat. 1562; Pub. L. 97–35, title XXIII, §2353(g), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title VI, §2663(e)(5), July 18, 1984, 98 Stat. 1168; Pub. L. 98–378, §10, Aug. 16, 1984, 98 Stat. 1317; Pub. L. 99–272, title XIV, §14001(b)(2), Apr. 7, 1986, 100 Stat. 328; Pub. L. 100–485, title V, §503, Oct. 13, 1988, 102 Stat. 2402; Pub. L. 104–193, title I, §108(g)(2), Aug. 22, 1996, 110 Stat. 2168; Pub. L. 105–33, title IV, §4757(a), Aug. 5, 1997, 111 Stat. 527; Pub. L. 106–554, §1(a)(6) [title VII, §703(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–574; Pub. L. 111–148, title II, §2601(b)(2), title X, §10201(i), Mar. 23, 2010, 124 Stat. 315, 922; Pub. L. 113–183, title III, §302(b), Sept. 29, 2014, 128 Stat. 1945.)

REFERENCES IN TEXT

Sections 1382 and 1383 of this title, referred to in subsec. (a)(1), (2), respectively, are references to sections 1382 and 1383 of this title as they existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior sections (which are set out as notes under sections 1382 and 1383, respectively, of this title) continue in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–183 designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), realigned margins, and added par. (2).

2010—Subsec. (d). Pub. L. 111–148, §10201(i), added subsec. (d).

Subsec. (e)(2). Pub. L. 111–148, §2601(b)(2)(A), inserted ''(5 years, in the case of a waiver described in section 1396n(h)(2) of this title)'' after ''3 years''.

Subsec. (f)(6). Pub. L. 111–148, §2601(b)(2)(B), inserted ''(5 years, in the case of a waiver described in section 1396n(h)(2) of this title)'' after ''3 years''.

2000—Subsec. (f). Pub. L. 106–554 added subsec. (f).

1997—Subsec. (e). Pub. L. 105–33 added subsec. (e).

1996—Subsec. (a)(2). Pub. L. 104–193, §108(g)(2)(A), designated existing provisions as subpar. (A), struck out ''603,'' before ''655,'', substituted '', and'' for period at end, and added subpar. (B).

Subsec. (b). Pub. L. 104–193, §108(g)(2)(C), redesignated subsec. (c) as (b) and struck out former subsec. (b)

which related to purposes, criteria and procedures applicable to establishment, participatory effect, duration and termination of demonstration projects.

Subsec. (c). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(3). Pub. L. 104–193, § 108(g)(2)(B), substituted ''part A of such subchapter'' for ''the program of aid to families with dependent children''.

Subsec. (d). Pub. L. 104–193, § 108(g)(2)(C), redesignated subsec. (d) as (c).

1988—Subsec. (d). Pub. L. 100–485 added subsec. (d).

1986—Subsec. (b)(2)(C). Pub. L. 99–272 struck out subpar. (C) relating to use of funds as are appropriated for payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1984—Subsec. (a). Pub. L. 98–378, § 10(a)(1), substituted ''part A or D of subchapter IV'' for ''part A of subchapter IV'' in provisions preceding par. (1).

Pub. L. 98–369, § 2663(e)(5), struck out ''VI,'' after ''I,'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–378, § 10(a)(2), inserted ''654,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''802,'' after ''602,''.

Subsec. (a)(2). Pub. L. 98–378, § 10(a)(3), inserted ''655,''.

Pub. L. 98–369, § 2663(e)(5), struck out ''803,'' after ''603,''.

Subsec. (c). Pub. L. 98–378, § 10(b), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''or XIX of this chapter'' for ''XIX, or XX of this chapter'', in par. (1) ''or 1396a of this title'' for ''1396a, 1397a, 1397b, or 1397c of this title'', and in par. (2) ''or 1396b of this title'' for ''1396b, or 1397a of this title'' and in par. (2) struck out ''or expenditures with respect to which payment shall be made under section 1397a of this title,'' before ''as may be appropriate''.

1977—Pub. L. 95–216 designated existing provisions as subsec. (a) and existing pars. (a) and (b) thereof as pars. (1) and (2), respectively, and added subsec. (b).

1975—Pub. L. 93–647, § 3(c)(1), substituted ''XIX, or XX'' for ''or XIX''.

Subsec. (a). Pub. L. 93–647, § 3(c)(2), inserted references to sections 1397a, 1397b, and 1397c.

Subsec. (b). Pub. L. 93–647, § 3(c)(3), (4), substituted ''1396b, or 1397a'' for ''1396b'', and inserted ''or expenditures with respect to which payment shall be made under section 1397a of this title'' after ''administration of such State plan or plans,''.

1973—Pub. L. 93–233 inserted references in text preceding subsec. (a) to subchapter VI of this chapter, in subsec. (a) to section 802 of this title, and in subsec. (b) to section 803 of this title.

1968—Pub. L. 90–248, § 241(c)(4), in opening phrase struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

Pub. L. 90–248, § 247, substituted in second sentence ''$4,000,000'' for ''$2,000,000'' and ''beginning after June 30, 1967'' for ''ending prior to July 1, 1968''.

1967—Pub. L. 90–36 substituted ''July 1, 1968'' for ''July 1, 1967''.

1965—Pub. L. 89–97 included in enumeration in opening phrase, and cls. (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title VII, § 703(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–575, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to requests for extensions of demonstration projects pending or submitted on or after the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title IV, § 4757(b), Aug. 5, 1997, 111 Stat. 528, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to demonstration projects initially approved before, on, or after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see Pub. L. 99–272, title XIV, § 14001(e), Apr. 7, 1986, 100 Stat. 329.

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–97, title I, § 121(c)(3), July 30, 1965, 79 Stat. 352, provided that the amendment made by that section is effective Jan. 1, 1966.

FAMILY SUPPORT DEMONSTRATION PROJECTS

Pub. L. 100–485, title V, § 501, Oct. 13, 1988, 102 Stat. 2400, as amended by Pub. L. 103–432, title II, § 262, Oct. 31, 1994, 108 Stat. 4467, provided that:

''(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act [42 U.S.C. 602] and participating in the job opportunities and basic skills training program under part F of title IV of such Act [former 42 U.S.C. 681–687], up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the pre-

ceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall prescribe, and no such project shall be conducted for a period of more than 3 years.

''(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

''(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

''(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1995 through 1999.

''(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act [42 U.S.C. 602], any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

''(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act [42 U.S.C. 602] and community-based organizations having experience and demonstrated effectiveness in providing services.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.''

DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS

Pub. L. 100–485, title V, §502, Oct. 13, 1988, 102 Stat. 2401, authorized Secretary of Health and Human Services to permit up to 5 States to undertake and carry out demonstration projects designed to test whether employment of parents of dependent children receiving AFDC as providers of child care for other children receiving AFDC would effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of this chapter by making additional child care services available to meet the requirements of section 602(g)(1)(A) of this title while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider, and authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants to States to carry out such demonstration projects.

DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS

Pub. L. 100–485, title V, §504, Oct. 13, 1988, 102 Stat. 2403, provided that any State could establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements prescribed by the Secretary of Health and Human Services, except that no such project could include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders, specified activities that could be funded by a grant under this section, authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991, and directed Secretary of Health and Human Services, not later than July 1, 1992, to submit to Congress a report on the effectiveness of the demonstration projects established under this section.

DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS

Pub. L. 100–485, title V, §506, Oct. 13, 1988, 102 Stat. 2405, provided that:

''(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

''(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

''(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

''(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

''(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

''(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

''(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

''(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

''(1) The State shall establish a 'Teen Care Plan' that shall consist of the following:

''(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community.

''(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

''(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

''(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

''(2) The State shall designate two geographical areas within the State to be targeted by the project.

One area will serve as the 'home base' for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a 'peripheral' participant, receiving assistance and services from the home base.

''(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

''(A) has a history of academic problems;

''(B) has a history of behavioral problems both in and out of school;

''(C) comes from a one-parent household; or

''(D) is pregnant or is a mother of a child.

''(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

''(A) shall consult with the Consortium on Adolescent Pregnancy;

''(B) shall consider—

''(i) the rate of teenage pregnancy in each State,

''(ii) the teenage school dropout rate in each State,

''(iii) the incidence of teenage substance abuse in each State, and

''(iv) the incidence of teenage suicide in each State; and

''(C) shall give priority to States whose applications—

''(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

''(ii) contain a 'State support agreement' signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

''(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

''(iv) indicate a demonstrably high rate of alcoholism among its residents.

''(2) Of the States selected to participate in the demonstration projects conducted under this section—

''(A) one shall be a geographically small State with a population of less than 1,250,000;

''(B) one shall be a State with a population of over 20,000,000; and

''(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

''(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

''(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

''(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.''

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1, 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Pub. L. 93–233, § 11, Dec. 31, 1973, 87 Stat. 958, provided that:

''(a) If any State (other than the Commonwealth of Puerto Rico, the Virgin Islands, or Guam) has any experimental, pilot, or demonstration project (referred to in section 1115 of the Social Security Act [42 U.S.C. 1315])—

''(1) which (prior to October 1, 1973) has been approved by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary'), for a period which ends on or after December 31, 1973, as being a project with respect to which the authority conferred upon him by subsection (a) or (b) of such section 1115 [42 U.S.C. 1315(a), (b)] will be exercised, and

''(2) with respect to the costs of which Federal financial participation would (except for the provisions of this section) be denied or reduced on account of the enactment of section 301 of the Social Security Amendments of 1972 [enacting subchapter XVI of this chapter],

then, for any period (after December 31, 1973) with respect to which such project is approved by the Secretary, Federal financial participation in the costs of such project shall be continued in like manner as if—

''(3) such section 301 [enacting subchapter XVI of this chapter] had not been enacted, and

''(4) such State (for the month of January 1974 and any month thereafter) continued to have in effect the State plan (approved under title XVI [42 U.S.C. 1381 et seq.]) which was in effect for the month of October 1973, or the State plans (approved under titles I, X, and XIV of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq.]) which were in effect for such month, as the case may be.

''(b) With respect to individuals—

''(1) who are participants in any project to which the provisions of subsection (a) are applicable, and

''(2) with respect to whom supplemental security income benefits are (or would, except for their participation in such project, be) payable under title XVI of the Social Security Act, or who meet the requirements for aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act of the State in which such project is conducted (as such State plan was in effect for July 1973),

the Secretary may waive such requirements of title XVI of such Act (as enacted by section 301 of the Social Security Amendments of 1972) to such extent as he determines to be necessary to the successful operation of such project.

''(c) In the case of any State which has entered into an agreement with the Secretary under section 1616 of the Social Security Act [42 U.S.C. 1382e] (or which is deemed, under section 212(d) of Public Law 93–66 [set out as a note under section 1382 of this title], to have entered into such an agreement), then, of the costs of any project of such State with respect to which there

is (solely by reason of the provisions of subsection (a)) Federal financial participation, the non-Federal share thereof shall—

''(1) be paid, from time to time, to such State by the Secretary, and

''(2) shall, for purposes of section 1616(d) of the Social Security Act [42 U.S.C. 1382e(d)] and section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title] be treated in like manner as if such non-Federal share were supplementary payments made by the Secretary on behalf of such State pursuant to such agreement.''

§ 1315a. Center for Medicare and Medicaid Innovation

(a) Center for Medicare and Medicaid Innovation established

(1) In general

There is created within the Centers for Medicare & Medicaid Services a Center for Medicare and Medicaid Innovation (in this section referred to as the ''CMI'') to carry out the duties described in this section. The purpose of the CMI is to test innovative payment and service delivery models to reduce program expenditures under the applicable subchapters while preserving or enhancing the quality of care furnished to individuals under such subchapters. In selecting such models, the Secretary shall give preference to models that also improve the coordination, quality, and efficiency of health care services furnished to applicable individuals defined in paragraph (4)(A).

(2) Deadline

The Secretary shall ensure that the CMI is carrying out the duties described in this section by not later than January 1, 2011.

(3) Consultation

In carrying out the duties under this section, the CMI shall consult representatives of relevant Federal agencies, and clinical and analytical experts with expertise in medicine and health care management. The CMI shall use open door forums or other mechanisms to seek input from interested parties.

(4) Definitions

In this section:

(A) Applicable individual

The term ''applicable individual'' means—

(i) an individual who is entitled to, or enrolled for, benefits under part A of subchapter XVIII or enrolled for benefits under part B of such subchapter;

(ii) an individual who is eligible for medical assistance under subchapter XIX, under a State plan or waiver; or

(iii) an individual who meets the criteria of both clauses (i) and (ii).

(B) Applicable subchapter

The term ''applicable subchapter'' means subchapter XVIII, subchapter XIX, or both.

(5) Testing within certain geographic areas

For purposes of testing payment and service delivery models under this section, the Secretary may elect to limit testing of a model to certain geographic areas.

(b) Testing of models (phase I)

(1) In general

The CMI shall test payment and service delivery models in accordance with selection criteria under paragraph (2) to determine the effect of applying such models under the applicable subchapter (as defined in subsection (a)(4)(B)) on program expenditures under such subchapters and the quality of care received by individuals receiving benefits under such subchapter.

(2) Selection of models to be tested

(A) In general

The Secretary shall select models to be tested from models where the Secretary determines that there is evidence that the model addresses a defined population for which there are deficits in care leading to poor clinical outcomes or potentially avoidable expenditures. The Secretary shall focus on models expected to reduce program costs under the applicable subchapter while preserving or enhancing the quality of care received by individuals receiving benefits under such subchapter. The models selected under this subparagraph may include, but are not limited to, the models described in subparagraph (B).

(B) Opportunities

The models described in this subparagraph are the following models:

(i) Promoting broad payment and practice reform in primary care, including patient-centered medical home models for high-need applicable individuals, medical homes that address women's unique health care needs, and models that transition primary care practices away from fee-for-service based reimbursement and toward comprehensive payment or salary-based payment.

(ii) Contracting directly with groups of providers of services and suppliers to promote innovative care delivery models, such as through risk-based comprehensive payment or salary-based payment.

(iii) Utilizing geriatric assessments and comprehensive care plans to coordinate the care (including through interdisciplinary teams) of applicable individuals with multiple chronic conditions and at least one of the following:

(I) An inability to perform 2 or more activities of daily living.

(II) Cognitive impairment, including dementia.

(iv) Promote[1] care coordination between providers of services and suppliers that transition health care providers away from fee-for-service based reimbursement and toward salary-based payment.

(v) Supporting care coordination for chronically-ill applicable individuals at high risk of hospitalization through a health information technology-enabled provider network that includes care

[1] So in original. Probably should be ''Promoting''.

coordinators, a chronic disease registry, and home tele-health technology.

(vi) Varying payment to physicians who order advanced diagnostic imaging services (as defined in section 1395m(e)(1)(B) of this title) according to the physician's adherence to appropriateness criteria for the ordering of such services, as determined in consultation with physician specialty groups and other relevant stakeholders.

(vii) Utilizing medication therapy management services, such as those described in section 299b–35 of this title.

(viii) Establishing community-based health teams to support small-practice medical homes by assisting the primary care practitioner in chronic care management, including patient self-management, activities.

(ix) Assisting applicable individuals in making informed health care choices by paying providers of services and suppliers for using patient decision-support tools, including tools that meet the standards developed and identified under section 299b–36(c)(2)(A) of this title, that improve applicable individual and caregiver understanding of medical treatment options.

(x) Allowing States to test and evaluate fully integrating care for dual eligible individuals in the State, including the management and oversight of all funds under the applicable subchapters with respect to such individuals.

(xi) Allowing States to test and evaluate systems of all-payer payment reform for the medical care of residents of the State, including dual eligible individuals.

(xii) Aligning nationally recognized, evidence-based guidelines of cancer care with payment incentives under subchapter XVIII in the areas of treatment planning and follow-up care planning for applicable individuals described in clause (i) or (iii) of subsection (a)(4)(A) with cancer, including the identification of gaps in applicable quality measures.

(xiii) Improving post-acute care through continuing care hospitals that offer inpatient rehabilitation, long-term care hospitals, and home health or skilled nursing care during an inpatient stay and the 30 days immediately following discharge.

(xiv) Funding home health providers who offer chronic care management services to applicable individuals in cooperation with interdisciplinary teams.

(xv) Promoting improved quality and reduced cost by developing a collaborative of high-quality, low-cost health care institutions that is responsible for—

(I) developing, documenting, and disseminating best practices and proven care methods;

(II) implementing such best practices and proven care methods within such institutions to demonstrate further improvements in quality and efficiency; and

(III) providing assistance to other health care institutions on how best to employ such best practices and proven care methods to improve health care quality and lower costs.

(xvi) Facilitate inpatient care, including intensive care, of hospitalized applicable individuals at their local hospital through the use of electronic monitoring by specialists, including intensivists and critical care specialists, based at integrated health systems.

(xvii) Promoting greater efficiencies and timely access to outpatient services (such as outpatient physical therapy services) through models that do not require a physician or other health professional to refer the service or be involved in establishing the plan of care for the service, when such service is furnished by a health professional who has the authority to furnish the service under existing State law.

(xviii) Establishing comprehensive payments to Healthcare Innovation Zones, consisting of groups of providers that include a teaching hospital, physicians, and other clinical entities, that, through their structure, operations, and joint-activity deliver a full spectrum of integrated and comprehensive health care services to applicable individuals while also incorporating innovative methods for the clinical training of future health care professionals.

(xix) Utilizing, in particular in entities located in medically underserved areas and facilities of the Indian Health Service (whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25)), telehealth services—

(I) in treating behavioral health issues (such as post-traumatic stress disorder) and stroke; and

(II) to improve the capacity of non-medical providers and non-specialized medical providers to provide health services for patients with chronic complex conditions.

(xx) Utilizing a diverse network of providers of services and suppliers to improve care coordination for applicable individuals described in subsection (a)(4)(A)(i) with 2 or more chronic conditions and a history of prior-year hospitalization through interventions developed under the Medicare Coordinated Care Demonstration Project under section 4016 of the Balanced Budget Act of 1997 (42 U.S.C. 1395b–1 note).

(xxi) Focusing primarily on physicians' services (as defined in section 1395w–4(j)(3) of this title) furnished by physicians who are not primary care practitioners.

(xxii) Focusing on practices of 15 or fewer professionals.

(xxiii) Focusing on risk-based models for small physician practices which may involve two-sided risk and prospective patient assignment, and which examine risk-adjusted decreases in mortality rates, hospital readmissions rates, and other relevant and appropriate clinical measures.

(xxiv) Focusing primarily on subchapter XIX, working in conjunction with the Center for Medicaid and CHIP Services.

(C) Additional factors for consideration

In selecting models for testing under subparagraph (A), the CMI may consider the following additional factors:

(i) Whether the model includes a regular process for monitoring and updating patient care plans in a manner that is consistent with the needs and preferences of applicable individuals.

(ii) Whether the model places the applicable individual, including family members and other informal caregivers of the applicable individual, at the center of the care team of the applicable individual.

(iii) Whether the model provides for in-person contact with applicable individuals.

(iv) Whether the model utilizes technology, such as electronic health records and patient-based remote monitoring systems, to coordinate care over time and across settings.

(v) Whether the model provides for the maintenance of a close relationship between care coordinators, primary care practitioners, specialist physicians, community-based organizations, and other providers of services and suppliers.

(vi) Whether the model relies on a team-based approach to interventions, such as comprehensive care assessments, care planning, and self-management coaching.

(vii) Whether, under the model, providers of services and suppliers are able to share information with patients, caregivers, and other providers of services and suppliers on a real time basis.

(viii) Whether the model demonstrates effective linkage with other public sector payers, private sector payers, or statewide payment models.

(3) Budget neutrality

(A) Initial period

The Secretary shall not require, as a condition for testing a model under paragraph (1), that the design of such model ensure that such model is budget neutral initially with respect to expenditures under the applicable subchapter.

(B) Termination or modification

The Secretary shall terminate or modify the design and implementation of a model unless the Secretary determines (and the Chief Actuary of the Centers for Medicare & Medicaid Services, with respect to program spending under the applicable subchapter, certifies), after testing has begun, that the model is expected to—

(i) improve the quality of care (as determined by the Administrator of the Centers for Medicare & Medicaid Services) without increasing spending under the applicable subchapter;

(ii) reduce spending under the applicable subchapter without reducing the quality of care; or

(iii) improve the quality of care and reduce spending.

Such termination may occur at any time after such testing has begun and before completion of the testing.

(4) Evaluation

(A) In general

The Secretary shall conduct an evaluation of each model tested under this subsection. Such evaluation shall include an analysis of—

(i) the quality of care furnished under the model, including the measurement of patient-level outcomes and patient-centeredness criteria determined appropriate by the Secretary; and

(ii) the changes in spending under the applicable subchapters by reason of the model.

(B) Information

The Secretary shall make the results of each evaluation under this paragraph available to the public in a timely fashion and may establish requirements for States and other entities participating in the testing of models under this section to collect and report information that the Secretary determines is necessary to monitor and evaluate such models.

(C) Measure selection

To the extent feasible, the Secretary shall select measures under this paragraph that reflect national priorities for quality improvement and patient-centered care consistent with the measures described in[2] 1395aaa(b)(7)(B) of this title.

(c) Expansion of models (phase II)

Taking into account the evaluation under subsection (b)(4), the Secretary may, through rulemaking, expand (including implementation on a nationwide basis) the duration and the scope of a model that is being tested under subsection (b) or a demonstration project under section 1395cc–3 of this title, to the extent determined appropriate by the Secretary, if—

(1) the Secretary determines that such expansion is expected to—

(A) reduce spending under applicable[3] subchapter without reducing the quality of care; or

(B) improve the quality of patient care without increasing spending;

(2) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce (or would not result in any increase in) net program spending under applicable subchapters; and

(3) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable subchapter for applicable individuals.

In determining which models or demonstration projects to expand under the preceding sentence, the Secretary shall focus on models and demonstration projects that improve the quality of patient care and reduce spending.

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[2] So in original. Probably should be ''in section''.

[3] So in original. Probably should be preceded by ''the''.

(d) Implementation

(1) Waiver authority

The Secretary may waive such requirements of subchapters XI and XVIII and of sections 1396a(a)(1), 1396a(a)(13), 1396b(m)(2)(A)(iii), and 1396u–4 (other than subsections (b)(1)(A) and (c)(5) of such section) of this title as may be necessary solely for purposes of carrying out this section with respect to testing models described in subsection (b).

(2) Limitations on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395*oo* of this title, or otherwise of—

(A) the selection of models for testing or expansion under this section;

(B) the selection of organizations, sites, or participants to test those models selected;

(C) the elements, parameters, scope, and duration of such models for testing or dissemination;

(D) determinations regarding budget neutrality under subsection (b)(3);

(E) the termination or modification of the design and implementation of a model under subsection (b)(3)(B); and

(F) determinations about expansion of the duration and scope of a model under subsection (c), including the determination that a model is not expected to meet criteria described in paragraph (1) or (2) of such subsection.

(3) Administration

Chapter 35 of title 44 shall not apply to the testing and evaluation of models or expansion of such models under this section.

(e) Application to CHIP

The Center may carry out activities under this section with respect to subchapter XXI in the same manner as provided under this section with respect to the program under the applicable subchapters.

(f) Funding

(1) In general

There are appropriated, from amounts in the Treasury not otherwise appropriated—

(A) $5,000,000 for the design, implementation, and evaluation of models under subsection (b) for fiscal year 2010;

(B) $10,000,000,000 for the activities initiated under this section for the period of fiscal years 2011 through 2019; and

(C) the amount described in subparagraph (B) for the activities initiated under this section for each subsequent 10-year fiscal period (beginning with the 10-year fiscal period beginning with fiscal year 2020).

Amounts appropriated under the preceding sentence shall remain available until expended.

(2) Use of certain funds

Out of amounts appropriated under subparagraphs (B) and (C) of paragraph (1), not less than $25,000,000 shall be made available each such fiscal year to design, implement, and evaluate models under subsection (b).

(g) Report to Congress

Beginning in 2012, and not less than once every other year thereafter, the Secretary shall submit to Congress a report on activities under this section. Each such report shall describe the models tested under subsection (b), including the number of individuals described in subsection (a)(4)(A)(i) and of individuals described in subsection (a)(4)(A)(ii) participating in such models and payments made under applicable subchapters for services on behalf of such individuals, any models chosen for expansion under subsection (c), and the results from evaluations under subsection (b)(4). In addition, each such report shall provide such recommendations as the Secretary determines are appropriate for legislative action to facilitate the development and expansion of successful payment models.

(Aug. 14, 1935, ch. 531, title XI, § 1115A, as added and amended Pub. L. 111–148, title III, § 3021(a), title X, § 10306, Mar. 23, 2010, 124 Stat. 389, 939; Pub. L. 114–10, title I, § 101(e)(4), Apr. 16, 2015, 129 Stat. 122; Pub. L. 114–85, § 1, Nov. 5, 2015, 129 Stat. 674.)

REFERENCES IN TEXT

Section 4016 of the Balanced Budget Act of 1997, referred to in subsec. (b)(2)(B)(xx), is section 4016 of Pub. L. 105–33, which is set out as a note under section 1395b–1 of this title.

AMENDMENTS

2015—Subsec. (b)(2)(B)(xxi) to (xxiv). Pub. L. 114–10, § 101(e)(4)(A), added cls. (xxi) to (xxiv).

Subsec. (b)(2)(C)(viii). Pub. L. 114–10, § 101(e)(4)(B), substituted ''other public sector payers, private sector payers, or statewide payment models'' for ''other public sector or private sector payers''.

Subsec. (d)(1). Pub. L. 114–85 substituted ''1396b(m)(2)(A)(iii), and 1396u–4 (other than subsections (b)(1)(A) and (c)(5) of such section)'' for ''and 1396b(m)(2)(A)(iii)''.

2010—Subsec. (a)(5). Pub. L. 111–148, § 10306(1), added par. (5).

Subsec. (b)(2)(A). Pub. L. 111–148, § 10306(2)(A), inserted ''The Secretary shall focus on models expected to reduce program costs under the applicable subchapter while preserving or enhancing the quality of care received by individuals receiving benefits under such subchapter.'' after the first sentence and substituted ''this subparagraph may include, but are not limited to,'' for ''the preceding sentence may include''.

Subsec. (b)(2)(B)(xix), (xx). Pub. L. 111–148, § 10306(2)(B), added cls. (xix) and (xx).

Subsec. (b)(2)(C)(viii). Pub. L. 111–148, § 10306(2)(C), added cl. (viii).

Subsec. (b)(4)(C). Pub. L. 111–148, § 10306(3), added subpar. (C).

Subsec. (c). Pub. L. 111–148, § 10306(4)(C), inserted concluding provisions.

Subsec. (c)(1)(B). Pub. L. 111–148, § 10306(4)(A), substituted ''patient care without increasing spending;'' for ''care and reduce spending; and''.

Subsec. (c)(2). Pub. L. 111–148, § 10306(4)(B), substituted ''reduce (or would not result in any increase in) net program spending under applicable subchapters; and'' for ''reduce program spending under applicable subchapters.''

Subsec. (c)(3). Pub. L. 111–148, § 10306(4)(C), added par. (3).

CONSTRUCTION REGARDING TELEHEALTH SERVICES

Pub. L. 114–10, title I, § 101(e)(5), Apr. 16, 2015, 129 Stat. 122, provided that: ''Nothing in the provisions of, or amendments made by, this title [see Tables for classi-

fication] shall be construed as precluding an alternative payment model or a qualifying APM participant (as those terms are defined in section 1833(z) of the Social Security Act [42 U.S.C. 1395*l*(z)], as added by paragraph (1)) from furnishing a telehealth service for which payment is not made under section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)).''

MEDICAID GLOBAL PAYMENT SYSTEM DEMONSTRATION PROJECT

Pub. L. 111–148, title II, §2705, Mar. 23, 2010, 124 Stat. 324, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall, in coordination with the Center for Medicare and Medicaid Innovation (as established under section 1115A of the Social Security Act [42 U.S.C. 1315a], as added by section 3021 of this Act), establish the Medicaid Global Payment System Demonstration Project under which a participating State shall adjust the payments made to an eligible safety net hospital system or network from a fee-for-service payment structure to a global capitated payment model.

''(b) DURATION AND SCOPE.—The demonstration project conducted under this section shall operate during a period of fiscal years 2010 through 2012. The Secretary shall select not more than 5 States to participate in the demonstration project.

''(c) ELIGIBLE SAFETY NET HOSPITAL SYSTEM OR NETWORK.—For purposes of this section, the term 'eligible safety net hospital system or network' means a large, safety net hospital system or network (as defined by the Secretary) that operates within a State selected by the Secretary under subsection (b).

''(d) EVALUATION.—

''(1) TESTING.—The Innovation Center shall test and evaluate the demonstration project conducted under this section to examine any changes in health care quality outcomes and spending by the eligible safety net hospital systems or networks.

''(2) BUDGET NEUTRALITY.—During the testing period under paragraph (1), any budget neutrality requirements under section 1115A(b)(3) of the Social Security Act [42 U.S.C. 1315a(b)(3)] (as so added) shall not be applicable.

''(3) MODIFICATION.—During the testing period under paragraph (1), the Secretary may, in the Secretary's discretion, modify or terminate the demonstration project conducted under this section.

''(e) REPORT.—Not later than 12 months after the date of completion of the demonstration project under this section, the Secretary shall submit to Congress a report containing the results of the evaluation and testing conducted under subsection (d), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''

§ 1315b. Providing Federal coverage and payment coordination for dual eligible beneficiaries

(a) Establishment of Federal Coordinated Health Care Office

(1) In general

Not later than March 1, 2010, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a Federal Coordinated Health Care Office.

(2) Establishment and reporting to CMS administrator

The Federal Coordinated Health Care Office—

(A) shall be established within the Centers for Medicare & Medicaid Services; and

(B) have as the Office[1] a Director who shall be appointed by, and be in direct line of authority to, the Administrator of the Centers for Medicare & Medicaid Services.

(b) Purpose

The purpose of the Federal Coordinated Health Care Office is to bring together officers and employees of the Medicare and Medicaid programs at the Centers for Medicare & Medicaid Services in order to—

(1) more effectively integrate benefits under the Medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the Medicaid program under title XIX of such Act [42 U.S.C. 1396 et seq.]; and

(2) improve the coordination between the Federal Government and States for individuals eligible for benefits under both such programs in order to ensure that such individuals get full access to the items and services to which they are entitled under titles XVIII and XIX of the Social Security Act.

(c) Goals

The goals of the Federal Coordinated Health Care Office are as follows:

(1) Providing dual eligible individuals full access to the benefits to which such individuals are entitled under the Medicare and Medicaid programs.

(2) Simplifying the processes for dual eligible individuals to access the items and services they are entitled to under the Medicare and Medicaid programs.

(3) Improving the quality of health care and long-term services for dual eligible individuals.

(4) Increasing dual eligible individuals' understanding of and satisfaction with coverage under the Medicare and Medicaid programs.

(5) Eliminating regulatory conflicts between rules under the Medicare and Medicaid programs.

(6) Improving care continuity and ensuring safe and effective care transitions for dual eligible individuals.

(7) Eliminating cost-shifting between the Medicare and Medicaid program and among related health care providers.

(8) Improving the quality of performance of providers of services and suppliers under the Medicare and Medicaid programs.

(d) Specific responsibilities

The specific responsibilities of the Federal Coordinated Health Care Office are as follows:

(1) Providing States, specialized MA plans for special needs individuals (as defined in section 1859(b)(6) of the Social Security Act (42 U.S.C. 1395w–28(b)(6))), physicians and other relevant entities or individuals with the education and tools necessary for developing programs that align benefits under the Medicare and Medicaid programs for dual eligible individuals.

(2) Supporting State efforts to coordinate and align acute care and long-term care services for dual eligible individuals with other items and services furnished under the Medicare program.

[1] So in original.

(3) Providing support for coordination of contracting and oversight by States and the Centers for Medicare & Medicaid Services with respect to the integration of the Medicare and Medicaid programs in a manner that is supportive of the goals described in paragraph (3).[2]

(4) To consult and coordinate with the Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) and the Medicaid and CHIP Payment and Access Commission established under section 1900 of such Act (42 U.S.C. 1396) with respect to policies relating to the enrollment in, and provision of, benefits to dual eligible individuals under the Medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the Medicaid program under title XIX of such Act [42 U.S.C. 1396 et seq.].

(5) To study the provision of drug coverage for new full-benefit dual eligible individuals (as defined in section 1935(c)(6) of the Social Security Act (42 U.S.C. 1396u–5(c)(6)),[3] as well as to monitor and report annual total expenditures, health outcomes, and access to benefits for all dual eligible individuals.

(e) Report

The Secretary shall, as part of the budget transmitted under section 1105(a) of title 31, submit to Congress an annual report containing recommendations for legislation that would improve care coordination and benefits for dual eligible individuals.

(f) Dual eligible individual defined

In this section, the term ''dual eligible individual'' means an individual who is entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq.], or enrolled for benefits under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.], and is eligible for medical assistance under a State plan under title XIX of such Act or under a waiver of such plan.

(Pub. L. 111–148, title II, § 2602, Mar. 23, 2010, 124 Stat. 315.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b), (d)(4), and (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of this chapter. Parts A and B of title XVIII of the Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Patient Protection and Affordable Care Act, and not as part of the Social Security Act which comprises this chapter.

[2] So in original. Probably should be ''subsection (c).''

[3] So in original. Another closing parenthesis probably should precede the comma.

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) of this subsection with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved

under subchapter I, X, XIV, XVI, or XIX of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Restitution when Secretary reverses his determination

Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Disallowance of items covered under other subchapters

Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, X, XIV,[1] XVI, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(e) Disallowance of items covered under subchapter XIX

(1) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter XIX shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance, provided that such request is made during the 60-day period that begins on the date the State receives notice of the disallowance.

(2)(A) A State may appeal a disallowance of a claim for federal[2] financial participation under subchapter XIX by the Secretary, or an unfavorable reconsideration of a disallowance, during the 60-day period that begins on the date the State receives notice of the disallowance or of the unfavorable reconsideration, in whole or in part, to the Departmental Appeals Board, established in the Department of Health and Human Services (in this paragraph referred to as the ''Board''), by filing a notice of appeal with the Board.

(B) The Board shall consider a State's appeal of a disallowance of such a claim (or of an unfavorable reconsideration of a disallowance) on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold a disallowance of such a claim or any portion thereof, the Board shall be bound by all applicable laws and regulations and shall conduct a thorough review of the issues, taking into account all relevant evidence. The Board's decision of an appeal under subparagraph (A) shall be the final decision of the Secretary and shall be subject to reconsideration by the Board only upon motion of either party filed during the 60-day period that begins on the date of the Board's decision or to judicial review in accordance with subparagraph (C).

(C) A State may obtain judicial review of a decision of the Board by filing an action in any United States District Court located within the appealing State (or, if several States jointly appeal the disallowance of claims for Federal financial participation under section 1396b of this title, in any United States District Court that is located within any State that is a party to the appeal) or the United States District Court for the District of Columbia. Such an action may only be filed—

(i) if no motion for reconsideration was filed within the 60-day period specified in subparagraph (B), during such 60-day period; or

(ii) if such a motion was filed within such period, during the 60-day period that begins on the date of the Board's decision on such motion.

(Aug. 14, 1935, ch. 531, title XI, §1116, as added Pub. L. 89–97, title IV, §404(a), July 30, 1965, 79 Stat. 419; amended Pub. L. 90–248, title II, §241(c)(5), Jan. 2, 1968, 81 Stat. 917; Pub. L. 93–233, §18(z–2)(1)(C), Dec. 31, 1973, 87 Stat. 974; Pub. L. 93–647, §3(d), Jan. 4, 1975, 88 Stat. 2349; Pub. L. 97–35, title XXIII, §2353(h), Aug. 13, 1981, 95 Stat. 872; Pub. L. 98–369, div. B, title III, §2354(c)(2), title VI, §2663(e)(6), July 18, 1984, 98 Stat. 1102, 1168; Pub. L. 104–193, title I, §108(g)(3), Aug. 22, 1996, 110 Stat. 2168; Pub. L. 110–275, title II, §204(a), (b), July 15, 2008, 122 Stat. 2592, 2593.)

REFERENCES IN TEXT

Section 1384 of this title, referred to in subsec. (a)(3), is a reference to section 1384 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1384 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–275, §204(b), struck out ''or XIX,'' after ''XVI,''.

Subsec. (e). Pub. L. 110–275, §204(a), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104–193, §108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (a)(3). Pub. L. 104–193, §108(g)(3)(B), struck out ''604,'' before ''1204,''.

Subsecs. (b), (d). Pub. L. 104–193, §108(g)(3)(A), struck out ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

1984—Subsec. (a)(1). Pub. L. 98–369, §2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, §2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, §2353(h)(1). See 1981 Amendment note below.

Subsec. (a)(3). Pub. L. 98–369, §2663(e)(6)(B), struck out ''804,'' after ''604,''.

Subsec. (b). Pub. L. 98–369, §2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, §2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, §2353(h)(1). See 1981 Amendment note below.

Subsec. (d). Pub. L. 98–369, §2663(e)(6)(C), substituted ''XVI, or XIX of this chapter, or part A'' for ''XVI, or or XIX of this chapter, or part A''.

Pub. L. 98–369, §2663(e)(6)(A), struck out ''VI,'' after ''I,''.

1981—Subsec. (a)(1). Pub. L. 97–35, §2353(h)(1), as amended by Pub. L. 98–369, §2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (a)(3). Pub. L. 97–35, §2353(h)(2), substituted ''or 1396c of this title'' for ''1396c, or 1397b of this title''.

Subsec. (b). Pub. L. 97–35, §2353(h)(1), as amended by Pub. L. 98–369, §2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

[1] So in original. Probably should be followed by ''or''.

[2] So in original. Probably should be capitalized.

Subsec. (d). Pub. L. 97–35, § 2353(h)(3), substituted ''or XIX of this chapter'' for ''XIX, or XX of this chapter''.

1975—Subsec. (a)(1). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (a)(3). Pub. L. 93–647, § 3(d)(2), substituted ''1396c, or 1397b'' for ''or 1396c''.

Subsec. (b). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (d). Pub. L. 93–647, § 3(d)(3), inserted ''XX,'' after ''XIX,''.

1973—Subsec. (a). Pub. L. 93–233, § 18(z–2)(1)(C)(i), (ii), inserted references in par. (1) to subchapter VI of this chapter and in par. (3) to section 804 of this title.

Subsecs. (b), (d). Pub. L. 93–233, § 18(z–2)(1)(C)(iii), (iv), inserted reference to subchapter VI of this chapter.

1968—Subsec. (a)(1). Pub. L. 90–248, § 241(c)(5)(A), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsecs. (b), (d). Pub. L. 90–248, § 241(c)(5)(B), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–275, title II, § 204(c), July 15, 2008, 122 Stat. 2593, provided that: ''The amendments made by this section [amending this section] take effect on the date of the enactment of this Act [July 15, 2008] and apply to any disallowance of a claim for Federal financial participation under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) made on or after such date or during the 60-day period prior to such date.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98–369 effective as if originally included in Pub. L. 97–35, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(e)(6) of 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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Pub. L. 89–97, title IV, § 404(b), July 30, 1965, 79 Stat. 420, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to determinations made after December 31, 1965.''

§ 1317. Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services

(a) The Administrator of the Centers for Medicare & Medicaid Services shall be appointed by the President by and with the advice and consent of the Senate.

(b)(1) There is established in the Centers for Medicare & Medicaid Services the position of Chief Actuary. The Chief Actuary shall be appointed by, and in direct line of authority to, the Administrator of such Centers. The Chief Actuary shall be appointed from among individuals who have demonstrated, by their education and experience, superior expertise in the actuarial sciences. The Chief Actuary shall exercise such duties as are appropriate for the office of the Chief Actuary and in accordance with professional standards of actuarial independence. The Chief Actuary may be removed only for cause.

(2) The Chief Actuary shall be compensated at the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5.

(3) In the office of the Chief Actuary there shall be an actuary whose duties relate exclusively to the programs under parts C and D of subchapter XVIII of this chapter and related provisions of such subchapter.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added Pub. L. 98–369, div. B, title III, § 2332(a), July 18, 1984, 98 Stat. 1088; amended Pub. L. 105–33, title IV, § 4643, Aug. 5, 1997, 111 Stat. 487; Pub. L. 108–173, title IX, § 900(c), (e)(1)(A), Dec. 8, 2003, 117 Stat. 2370.)

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89–97, title IV, § 405, 79 Stat. 420; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§ 221(a)–(c), 241(c)(6), 81 Stat. 899, 917, related to maintenance of State public assistance expenditures, prior to repeal by Pub. L. 90–248, title II, § 221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

AMENDMENTS

2003—Pub. L. 108–173, § 900(e)(1)(A)(i), substituted ''Appointment of the Administrator and Chief Actuary of the Centers for Medicare & Medicaid Services'' for ''Appointment of Administrator and Chief Actuary of Health Care Financing Administration'' in section catchline.

Subsec. (a). Pub. L. 108–173, § 900(e)(1)(A)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

Subsec. (b)(1). Pub. L. 108–173, § 900(e)(1)(A)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''such Centers'' for ''such Administration''.

Subsec. (b)(3). Pub. L. 108–173, § 900(c), added par. (3).

1997—Pub. L. 105–33 amended section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE

Pub. L. 98–369, div. B, title III, § 2332(c), July 18, 1984, 98 Stat. 1089, provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984].''

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a),[1] 1203(a),[1] 1353(a),[1] and 1383(a)[1] of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term ''Federal medical assistance percentage'' shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum.

(Aug. 14, 1935, ch. 531, title XI, §1118, as added Pub. L. 89–97, title IV, §411, July 30, 1965, 79 Stat. 423; amended Pub. L. 90–248, title II, §241(c)(7), Jan. 2, 1968, 81 Stat. 917; Pub. L. 94–273, §2(23), Apr. 21, 1976, 90 Stat. 376; Pub. L. 95–600, title VIII, §802(a), Nov. 6, 1978, 92 Stat. 2945; Pub. L. 96–272, title III, §305(c), June 17, 1980, 94 Stat. 530; Pub. L. 100–485, title VI, §601(c)(3), Oct. 13, 1988, 102 Stat. 2408; Pub. L. 104–193, title I, §108(g)(4), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Paragraph (1) of sections 303(a), 1203(a), and 1353(a) of this title, referred to in text, were repealed by Pub. L. 97–35, title XXI, §2184(a)(4)(A), (c)(2)(A), Aug. 13, 1981, 95 Stat. 816, 817.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of subchapter XVI of this chapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1996—Pub. L. 104–193 struck out ''603(a),'' before ''1203(a),'', ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'', and '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter'' after ''the Virgin Islands, and Guam, mean 75 per centum''.

1988—Pub. L. 100–485 inserted before period at end '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter''.

1980—Pub. L. 96–272 struck out ''when applied to quarters in the fiscal year ending September 30, 1979'' after ''means 75 per centum''.

1978—Pub. L. 95–600, inserted provision relating to definition of ''Federal medical assistance percentage'' in the case of Puerto Rico, the Virgin Islands, and Guam.

1976—Pub. L. 94–273 substituted ''September'' for ''June''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 1301 of this title.

§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

(Aug. 14, 1935, ch. 531, title XI, §1119, as added Pub. L. 90–248, title II, §209(a), Jan. 2, 1968, 81 Stat. 894; amended Pub. L. 104–193, title I, §108(g)(5), Aug. 22, 1996, 110 Stat. 2168.)

REFERENCES IN TEXT

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

[1] See References in Text note below.

AMENDMENTS

1996—Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' in introductory provisions and struck out ''603(a),'' before ''1203(a),'' in closing provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

EFFECTIVE DATE

Pub. L. 90–248, title II, § 209(b), Jan. 2, 1968, 81 Stat. 895, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967.''

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Deputy Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Pub. L. 90–248, title II, § 249, Jan. 2, 1968, 81 Stat. 919; amended Pub. L. 93–608, § 2(5), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 97–375, title I, § 107(a), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(v), July 18, 1984, 98 Stat. 1170; Pub. L. 101–509, title V, § 529 [title I, § 112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''Deputy Secretary of Health and Human Services'' for ''Under Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1982—Pub. L. 97–375 struck out subsec. (b) which directed the Secretary to submit an annual report to Congress describing each project approved under former subsec. (a) of this section during the preceding year, including the purpose, probable cost, and expected duration of each project, and struck out ''(a)'' before ''No payment''.

1975—Subsec. (b). Pub. L. 93–608 substituted provisions relating to an annual submission of the required report to the Congress by the Secretary for each approved project, for provisions relating to submission of the report as soon as possible after approval.

EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Amendment by Pub. L. 101–509 effective on the first day of the first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, see section 529 [title I, § 112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

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.

§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

(1) monitor the operation of the systems established under subsection (a) of this section;

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health

systems agencies (designated under section 300*l*–4[1] of this title) and State health planning and development agencies (designated under section 300m[1] of this title), as may be necessary to carry out such agencies' and organizations' functions.

(Aug. 14, 1935, ch. 531, title XI, § 1121, as added Pub. L. 95–142, § 19(a), Oct. 25, 1977, 91 Stat. 1203.)

REFERENCES IN TEXT

Section 300*l*–4 of this title, referred to in subsec. (c), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300m of this title, referred to in subsec. (c), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, § 1121, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec. (b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of ''intermediate care facility'', which is covered in section 1396d(c) of this title, prior to repeal by Pub. L. 92–223, § 4(c), Dec. 28, 1971, 85 Stat. 810.

Section was additionally amended by Pub. L. 92–603, title II, § 278(a)(24), Oct. 30, 1972, 86 Stat. 1453, without reference to the earlier repeal of this section by Pub. L. 92–223.

TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Pub. L. 95–142, § 19(c)(1), Oct. 25, 1977, 91 Stat. 1205, directed Secretary of Health, Education, and Welfare to establish the systems described in subsec. (a) of this section only after consultation with interested parties and for hospitals, skilled nursing facilities, and intermediate care facilities, not later than the end of the one year period beginning on Oct. 25, 1977, and for other types of health services facilities and organizations, not later than the end of the two-year period beginning on Oct. 25, 1977.

§ 1320a–1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters XVIII and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) of this section nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to

[1] See References in Text note below.

obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act [42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter XVIII or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

(e) Treatment of lease or comparable arrangement of any facility or equipment for a facility in determining amount of exclusions from Federal payments

Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) of this section if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Reconsideration by Secretary of determinations

Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) "Capital expenditure" defined

For the purposes of this section, a ''capital expenditure'' is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

(h) Applicability to Christian Science sanatoriums

The provisions of this section shall not apply to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and

assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this chapter or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(Aug. 14, 1935, ch. 531, title XI, §1122, as added Pub. L. 92–603, title II, §221(a), Oct. 30, 1972, 86 Stat. 1386; amended Pub. L. 93–233, §18(z), (z–1), Dec. 31, 1973, 87 Stat. 973; Pub. L. 95–559, §14(b), Nov. 1, 1978, 92 Stat. 2141; Pub. L. 96–32, §2(c), July 10, 1979, 93 Stat. 82; Pub. L. 97–35, title XXI, §2193(c)(3), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, §137(a)(5), Sept. 3, 1982, 96 Stat. 376; Pub. L. 98–21, title VI, §607(a), (b)(1), (c), Apr. 20, 1983, 97 Stat. 171, 172; Pub. L. 98–369, div. B, title III, §2354(a)(1), (2), July 18, 1984, 98 Stat. 1100; Pub. L. 105–33, title IV, §4454(c)(1), Aug. 5, 1997, 111 Stat. 431.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–33 substituted ''a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).'' for ''Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.''

1984—Subsec. (b). Pub. L. 98–369, §2354(a)(1), substituted a comma for the period at end of par. (1), and struck out ''(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)'' before ''to meet the need'' in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98–369, §2354(a)(2), substituted ''5703'' for ''5703(b)''.

1983—Subsec. (c). Pub. L. 98–21, §607(a), substituted ''the general fund in the Treasury'' for ''the Federal Hospital Insurance Trust Fund''.

Subsec. (g). Pub. L. 98–21, §607(b)(1), substituted ''$600,000 (or such lesser amount as the State may establish)'' for ''$100,000'' and Pub. L. 98–21, §607(b)(1)(B), substituted ''the dollar amount specified in clause (1)'' for ''$100,000'' the second time it appeared.

Subsec. (j). Pub. L. 98–21, §607(c), added subsec. (j).

1982—Subsec. (d)(2). Pub. L. 97–248 amended directory language of Pub. L. 97–35, §2193(c)(3)(B), to correct typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

Subsec. (d)(1). Pub. L. 97–35, §2193(c)(3)(A), substituted in provision following subpar. (B)(ii)(II) ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter'' in two places.

Subsec. (d)(2). Pub. L. 97–35, §2193(c)(3)(B), as amended by Pub. L. 97–248, §137(a)(5), substituted ''subchapter XVIII or XIX of this chapter'' for ''subchapter V, XVIII, or XIX of this chapter''.

Subsec. (e). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1979—Pub. L. 96–32 amended directory language of Pub. L. 95–559 and required no change in text of section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95–559, §14(b)(1), (2), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95–559, §14(b)(1), (3), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing and in par. (2) ''or organization, or of any facility of such organization,'' after ''expansion of such facility''.

1973—Subsec. (d)(1). Pub. L. 93–233, §18(z), inserted ''or a fixed fee or negotiated rate'' after ''per capita'' wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93–233, §18(z–1), substituted ''exclude'' for ''include'' where last appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, §2354(e), July 18, 1984, 98 Stat. 1102, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1316, 1320a–7a, 1320a–8, 1395f, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm, 1395*oo*, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

''(2) The amendments made by paragraphs (1) [amending section 1395f of this title and provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96–499, 97–35, and 97–248, respectively.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Pub. L. 92–603, title II, §221(b), Oct. 30, 1972, 86 Stat. 1389, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXPENDITURES OR OBLIGATIONS OF HEALTH CARE FACILITIES PROVIDING HEALTH CARE SERVICES PRIOR TO DECEMBER 18, 1970; LIMITATIONS ON FEDERAL PARTICIPATION

Pub. L. 92–603, title II, §221(d), Oct. 30, 1972, 86 Stat. 1389, provided that: ''In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ended December 17, 1970.''

§ 1320a–1a. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 31, 1994, Pub. L. 103–432, title II, §203(a), 108 Stat. 4454, which related to reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements, was renumbered section 1123A of act Aug. 14, 1935, by Pub. L. 104–193, title V, §504, Aug. 22, 1996, 110 Stat. 2278, and was transferred to section 1320a–2a of this title.

§ 1320a–2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, §1123, as added Pub. L. 103–382, title V, §555(a), Oct. 20, 1994, 108 Stat. 4057.)

PRIOR PROVISIONS

A prior section 1320a–2, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 30, 1972, Pub. L. 92–603, title II,

§ 241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97–248, title I, § 126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100–360, title IV, § 430(a), as added Pub. L. 100–485, title VI, § 608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100–360.

Another section 1123 of act Aug. 14, 1935, was renumbered section 1123A, and is classified to section 1320a–2a of this title.

EFFECTIVE DATE

Pub. L. 103–382, title V, § 555(b), Oct. 20, 1994, 108 Stat. 4058, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment.''

§ 1320a–2a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

(1) State plan requirements under such parts B and E,

(2) implementing regulations promulgated by the Secretary, and

(3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

(1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;

(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review (which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title), and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, § 1123A, formerly § 1123, as added Pub. L. 103–432, title II, § 203(a), Oct. 31, 1994, 108 Stat. 4454; renumbered § 1123A, Pub. L. 104–193, title V, § 504, Aug. 22, 1996, 110 Stat. 2278; amended Pub. L. 109–432, div. B, title IV, § 405(c)(1)(B)(ii), Dec. 20, 2006, 120 Stat. 2999.)

CODIFICATION

Section was formerly classified to section 1320a–1a of this title prior to renumbering by Pub. L. 104–193.

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–432 inserted ''(which shall include determining whether the State program is in conformity with the requirement of section 671(a)(27) of this title)'' after ''review''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 effective on the date that is 6 months after Dec. 20, 2006, see section 405(c)(1)(B)(iii) of Pub. L. 109–432, set out as a note under section 671 of this title.

EFFECTIVE DATE

Pub. L. 103–432, title II, § 203(c)(1), Oct. 31, 1994, 108 Stat. 4456, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

REGULATIONS

Pub. L. 103–432, title II, § 203(c)(3), Oct. 31, 1994, 108 Stat. 4456, provided that: ''The Secretary shall promulgate the regulations referred to in section 1123(a) [now 1123A(a)] of the Social Security Act [42 U.S.C. 1320a–2a(a)] (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.''

§ 1320a–3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a) In general

(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest and supply the Secretary with the[1] both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.

(2) As used in this section, the term ''disclosing entity'' means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term ''person with an ownership or control interest'' means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) Other disclosing entities

To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(c) Required disclosure of ownership and additional disclosable parties information

(1) Disclosure

A facility shall have the information described in paragraph (2) available—

(A) during the period beginning on March 23, 2010, and ending on the date such information is made available to the public under section 6101(b) of the Patient Protection and Affordable Care Act for submission to the Secretary, the Inspector General of the Department of Health and Human Services, the State in which the facility is located, and the State long-term care ombudsman in the case where the Secretary, the Inspector General, the State, or the State long-term care ombudsman requests such information; and

(B) beginning on the effective date of the final regulations promulgated under paragraph (3)(A), for reporting such information in accordance with such final regulations.

Nothing in subparagraph (A) shall be construed as authorizing a facility to dispose of or

[1] So in original. The word ''the'' probably should not appear.

delete information described in such subparagraph after the effective date of the final regulations promulgated under paragraph (3)(A).

(2) Information described

(A) In general

The following information is described in this paragraph:

(i) The information described in subsections (a) and (b), subject to subparagraph (C).

(ii) The identity of and information on—

(I) each member of the governing body of the facility, including the name, title, and period of service of each such member;

(II) each person or entity who is an officer, director, member, partner, trustee, or managing employee of the facility, including the name, title, and period of service of each such person or entity; and

(III) each person or entity who is an additional disclosable party of the facility.

(iii) The organizational structure of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(B) Special rule where information is already reported or submitted

To the extent that information reported by a facility to the Internal Revenue Service on Form 990, information submitted by a facility to the Securities and Exchange Commission, or information otherwise submitted to the Secretary or any other Federal agency contains the information described in clauses (i), (ii), or (iii) of subparagraph (A), the facility may provide such Form or such information submitted to meet the requirements of paragraph (1).

(C) Special rule

In applying subparagraph (A)(i)—

(i) with respect to subsections (a) and (b), ''ownership or control interest'' shall include direct or indirect interests, including such interests in intermediate entities; and

(ii) subsection (a)(3)(A)(ii) shall include the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the entity or any of the property or assets thereof, if the interest is equal to or exceeds 5 percent of the total property or assets of the entirety.

(3) Reporting

(A) In general

Not later than the date that is 2 years after March 23, 2010, the Secretary shall promulgate final regulations requiring, effective on the date that is 90 days after the date on which such final regulations are published in the Federal Register, a facility to report the information described in paragraph (2) to the Secretary in a standardized format, and such other regulations as are necessary to carry out this subsection. Such final regulations shall ensure that the facility certifies, as a condition of participation and payment under the program under subchapter XVIII or XIX, that the information reported by the facility in accordance with such final regulations is, to the best of the facility's knowledge, accurate and current.

(B) Guidance

The Secretary shall provide guidance and technical assistance to States on how to adopt the standardized format under subparagraph (A).

(4) No effect on existing reporting requirements

Nothing in this subsection shall reduce, diminish, or alter any reporting requirement for a facility that is in effect as of March 23, 2010.

(5) Definitions

In this subsection:

(A) Additional disclosable party

The term ''additional disclosable party'' means, with respect to a facility, any person or entity who—

(i) exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

(ii) leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

(iii) provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

(B) Facility

The term ''facility'' means a disclosing entity which is—

(i) a skilled nursing facility (as defined in section 1395i–3(a) of this title); or

(ii) a nursing facility (as defined in section 1396r(a) of this title).

(C) Managing employee

The term ''managing employee'' means, with respect to a facility, an individual (including a general manager, business manager, administrator, director, or consultant) who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

(D) Organizational structure

The term ''organizational structure'' means, in the case of—

(i) a corporation, the officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent;

(ii) a limited liability company, the members and managers of the limited liability company (including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company);

(iii) a general partnership, the partners of the general partnership;

(iv) a limited partnership, the general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent;

(v) a trust, the trustees of the trust;

(vi) an individual, contact information for the individual; and

(vii) any other person or entity, such information as the Secretary determines appropriate.

(Aug. 14, 1935, ch. 531, title XI, § 1124, as added Pub. L. 95–142, § 3(a)(1), Oct. 25, 1977, 91 Stat. 1177; amended Pub. L. 96–499, title IX, § 912(a), Dec. 5, 1980, 94 Stat. 2619; Pub. L. 97–35, title XXIII, § 2353(i), Aug. 13, 1981, 95 Stat. 872; Pub. L. 100–93, § 11, Aug. 18, 1987, 101 Stat. 697; Pub. L. 105–33, title IV, §§ 4313(a), 4707(c), Aug. 5, 1997, 111 Stat. 388, 506; Pub. L. 111–148, title VI, § 6101(a), Mar. 23, 2010, 124 Stat. 699.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

Section 6101(b) of the Patient Protection and Affordable Care Act, referred to in subsec. (c)(1)(A), is section 6101(b) of Pub. L. 111–148, which is set out as a note below.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–148 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105–33, § 4313(a), inserted before period at end of concluding provisions ''and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3) of this section), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.'' The insertion was made to reflect the probable intent of Congress, in the absence of closing quotations designating the provisions to be inserted.

Subsec. (a)(2)(A). Pub. L. 105–33, § 4707(c), inserted ''a managed care entity, as defined in section 1396u–2(a)(1)(B) of this title,'' after ''renal disease facility,''.

1987—Subsec. (a)(3)(A)(ii). Pub. L. 100–93 struck out ''$25,000 or'' after ''exceeds''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(i)(1), substituted in subpars. (A) and (B) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2353(i)(2)(C), struck out subpar. (D) which included within term ''disclosing entity'' an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

1980—Subsec. (a)(3)(A)(ii). Pub. L. 96–499 substituted ''of a whole or part interest'' for ''(in whole or in part) of an interest of 5 per centum or more'' and inserted '', which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title IV, § 4313(e), Aug. 5, 1997, 111 Stat. 389, provided that:

''(1) DISCLOSURE REQUIREMENTS.—The amendment made by subsection (a) [amending this section] shall apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d) [set out as a note below].

''(2) OTHER PROVIDERS.—The amendments made by subsection (b) [amending section 1320a–3a of this title] shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.''

Amendment by section 4707(c) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Pub. L. 95–142, § 3(e), Oct. 25, 1977, 91 Stat. 1179, provided that: ''The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [42 U.S.C. 701 et seq., 1395 et seq., 1396 et seq., 1397 et seq.] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.''

PUBLIC AVAILABILITY OF INFORMATION

Pub. L. 111–148, title VI, § 6101(b), Mar. 23, 2010, 124 Stat. 702, provided that: ''Not later than the date that is 1 year after the date on which the final regulations promulgated under section 1124(c)(3)(A) of the Social Security Act [42 U.S.C. 1320a–3(c)(3)(A)], as added by subsection (a), are published in the Federal Register, the Secretary of Health and Human Services shall make the information reported in accordance with such final regulations available to the public in accordance with procedures established by the Secretary.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Pub. L. 105–33, title IV, § 4313(d), Aug. 5, 1997, 111 Stat. 389, provided that: ''Before the amendments made by this section [amending this section and section 1320a–3a of this title] may become effective, the Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under such amendments.''

§ 1320a–3a. Disclosure requirements for other providers under part B of Medicare

(a) Disclosure required to receive payment

No payment may be made under part B of subchapter XVIII of this chapter for items or serv-

ices furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest;

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII of this chapter with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1320a–7, 1320a–7a, or 1320a–7b of this title; and

(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 405(c)(2)(B) of this title) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).

(b) Updates to information supplied

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) of this section not later than 180 days after such changes or updates take effect.

(c) Verification

(1) Transmittal by HHS

The Secretary shall transmit—

(A) to the Commissioner of Social Security information concerning each social security account number (assigned under section 405(c)(2)(B) of this title), and

(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986),

supplied to the Secretary pursuant to subsection (a)(3) of this section or section 1320a–3(c)[1] of this title to the extent necessary for verification of such information in accordance with paragraph (2).

(2) Verification

The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

(3) Fees for verification

The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate negotiated between the Secretary and such official, for the costs incurred by such official in performing the verification and correction services described in this subsection.

(d) Definitions

For purposes of this section—

(1) the term ''disclosing part B provider'' means any entity receiving payment on an assignment-related basis (or, for purposes of subsection (a)(3) of this section, any entity receiving payment) for furnishing items or services for which payment may be made under part B of subchapter XVIII of this chapter, except that such term does not include an entity described in section 1320a–3(a)(2) of this title;

(2) the term ''managing employee'' means, with respect to a provider, a person described in section 1320a–5(b) of this title; and

(3) the term ''person with an ownership or control interest'' means, with respect to a provider—

(A) a person described in section 1320a–3(a)(3) of this title, or

(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.

(Aug. 14, 1935, ch. 531, title XI, §1124A, as added Pub. L. 101–508, title IV, §4164(b)(1), Nov. 5, 1990, 104 Stat. 1388–101; amended Pub. L. 103–432, title I, §147(f)(7)(A)(i), Oct. 31, 1994, 108 Stat. 4432; Pub. L. 105–33, title IV, §4313(b), (c), Aug. 5, 1997, 111 Stat. 388.)

REFERENCES IN TEXT

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

Section 1320a–3 of this title, referred to in subsec. (c)(1), does not contain a subsec. (c).

AMENDMENTS

1997—Subsec. (a)(3). Pub. L. 105–33, §4313(b)(1), added par. (3).

Subsec. (c). Pub. L. 105–33, §4313(c)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 105–33, §4313(b)(2), inserted ''(or, for purposes of subsection (a)(3) of this section, any entity receiving payment)'' after ''on an assignment-related basis''.

Subsec. (d). Pub. L. 105–33, §4313(c)(1), redesignated subsec. (c) as (d).

1994—Subsec. (a)(2)(A). Pub. L. 103–432 made technical amendment to reference to subchapter XVIII of this chapter to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4313(b) of Pub. L. 105–33 applicable to payment for items and services furnished more than 90 days after date of submission of report under section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title, see section 4313(e) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–432, title I, §147(g), Oct. 31, 1994, 108 Stat. 4432, provided that: ''Except as otherwise provided in this section [amending this section and sections 1320b–5, 1395*l*, 1395p, 1395q, 1395x, 1395y, and 1395cc of this title, enacting provisions set out as notes under sections 1395*l*, 1395p, and 1395y of this title, amending provisions set out as notes under this section and sections 254b, 1395*l*, and 1395u of this title, and repealing provi-

[1] See References in Text note below.

sions set out as a note under section 1395*l* of this title], the amendments made by this section shall take effect as if included in the enactment of OBRA–1990 [Pub L. 101–508].''

EFFECTIVE DATE

Pub. L. 101–508, title IV, § 4164(b)(4), Nov. 5, 1990, 104 Stat. 1388–102, as amended by Pub. L. 103–432, title I, § 147(f)(7)(A)(ii), Oct. 31, 1994, 108 Stat. 4432, provided that: ''The amendments made by paragraphs (1), (2), and (3) [enacting this section and amending sections 1320a–7 and 1320a–7b of this title] shall apply with respect to items or services furnished on or after—

''(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act [Nov. 5, 1990], has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.]; or

''(B) January 1, 1992, in the case of items or services furnished by any other provider.''

REPORT ON CONFIDENTIALITY OF SOCIAL SECURITY ACCOUNT NUMBERS

Before amendment by Pub. L. 105–33 may become effective, Secretary of Health and Human Services is required to submit to Congress a report on steps Secretary has taken to assure the confidentiality of social security account numbers that will be provided to Secretary, see section 4313(d) of Pub. L. 105–33, set out as a note under section 1320a–3 of this title.

§ 1320a–4. Issuance of subpenas by Comptroller General

(a) Authorization; scope; service and proof of service

For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpena; contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the Government Accountability Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by Government Accountability Office

No personal medical record in the possession of the Government Accountability Office shall be subject to subpena or discovery proceedings in a civil action.

(Aug. 14, 1935, ch. 531, title XI, § 1125, as added Pub. L. 95–142, § 6, Oct. 25, 1977, 91 Stat. 1192; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsecs. (b) and (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' wherever appearing.

§ 1320a–5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title. The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any entity of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term ''managing employee'' means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Pub. L. 95–142, § 8(a), Oct. 25, 1977, 91 Stat. 1194; amended Pub. L. 97–35, title XXIII, § 2353(j), Aug. 13, 1981, 95 Stat. 873; Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(vi), July 18, 1984, 98 Stat. 1170; Pub. L. 100–93, § 8(b), Aug. 18, 1987, 101 Stat. 692.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, § 8(b)(1), in first sentence substituted ''or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a

[1] So in original. The comma probably should not appear.

person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title.'' for ''or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

''(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b) of this section) of such institution, organization, or agency, and

''(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.'',

and in second sentence substituted ''entity'' for ''institution, organization, or agency''.

Subsec. (b). Pub. L. 100–93, §8(b)(2), substituted ''entity'' for ''institution, organization, or agency'' in three places.

1984—Subsec. (a). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions following par. (2).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Pub. L. 95–142, §8(e), Oct. 25, 1977, 91 Stat. 1195, provided that: ''The amendments made by this section [enacting this section and amending sections 1395cc, 1396b, and 1397a of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977].''

§ 1320a–6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due. A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to subsection (a)(4) or (b) of section 406 of this title.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term ''supplemental security income benefits'' means benefits paid or payable by the Commissioner of Social Security under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93–66.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Commissioner of Social Security shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title XI, §1127, as added Pub. L. 96–265, title V, §501(a), June 9, 1980, 94 Stat. 469; amended Pub. L. 98–369, div. B, title VI, §2615(a), July 18, 1984, 98 Stat. 1132; Pub. L. 101–508, title V, §5106(b), Nov. 5, 1990, 104 Stat. 1388–268; Pub. L. 103–296, title I, §108(b)(8), title III, §321(f)(3)(B)(ii), Aug. 15, 1994, 108 Stat. 1483, 1542.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93–66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §321(f)(3)(B)(ii), in last sentence substituted ''subsection (a)(4) or (b) of section 406 of this title'' for ''section 406(a)(4) of this title''.

Subsecs. (b), (c). Pub. L. 103–296, §108(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (a). Pub. L. 101–508 inserted at end ''A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 406(a)(4) of this title.''

1984—Pub. L. 98–369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(8) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(ii) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that such amendment applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d), of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, § 2615(b), July 18, 1984, 98 Stat. 1133, provided that: ''The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.''

EFFECTIVE DATE

Pub. L. 96–265, title V, § 501(d), June 9, 1980, 94 Stat. 470, provided that: ''The amendments made by this section [enacting this section and amending sections 404 and 1383 of this title] shall be applicable in the case of payments of monthly insurance benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] entitlement for which is determined on or after the first day of the thirteenth month which begins after the date of the enactment of this Act [June 9, 1980].''

§ 1320a–6a. Interagency coordination to improve program administration

(a) Coordination agreement

Notwithstanding any other provision of law, including section 407 of this title, the Commissioner of Social Security (referred to in this section as ''the Commissioner'') and the Director of the Office of Personnel Management (referred to in this section as ''the Director'') shall enter into an agreement under which a system is established to carry out the following procedure:

(1) The Director shall notify the Commissioner when any individual is determined to be entitled to a monthly disability annuity payment pursuant to subchapter V of chapter 84 of subpart G of part III of title 5 and shall certify that such individual has provided the authorization described in subsection (f).

(2) If the Commissioner determines that an individual described in paragraph (1) is also entitled to past-due benefits under section 423 of this title, the Commissioner shall notify the Director of such fact.

(3) Not later than 30 days after receiving a notification described in paragraph (2) with respect to an individual, the Director shall provide the Commissioner with the total amount of any disability annuity overpayments made to such individual, as well as any other information (in such form and manner as the Commissioner shall require) that the Commissioner determines is necessary to carry out this section.

(4) If the Director provides the Commissioner with the information described in paragraph (3) in a timely manner, the Commissioner may withhold past-due benefits under section 423 of this title to which such individual is entitled and may pay the amount described in paragraph (3) to the Office of Personnel Management for any disability annuity overpayments made to such individual.

(5) The Director shall credit any amount received under paragraph (4) with respect to an individual toward any disability annuity overpayment owed by such individual.

(b) Limitations

(1) Priority of other reductions

Benefits shall only be withheld under this section after any other reduction applicable under this chapter, including sections 406(a)(4), 424a, and 1320a–6(a) of this title.

(2) Timely notification required

The Commissioner may not withhold benefits under this section if the Director does not provide the notice described in subsection (a)(3) within the time period described in such subsection.

(c) Delayed payment of past-due benefits

If the Commissioner is required to make a notification described in subsection (a)(2) with respect to an individual, the Commissioner shall not make any payment of past-due benefits under section 423 of this title to such individual until after the period described in subsection (a)(3).

(d) Review

Notwithstanding section 405 of this title or any other provision of law, any determination regarding the withholding of past-due benefits under this section shall only be subject to adjudication and review by the Director under section 8461 of title 5.

(e) Disability annuity overpayment defined

For purposes of this section, the term ''disability annuity overpayment'' means the amount of the reduction under section 8452(a)(2) of title 5 applicable to a monthly annuity payment made to an individual pursuant to subchapter V of chapter 84 of subpart G of part III of such title due to the individual's concurrent entitlement to a disability insurance benefit under section 423 of this title during such month.

(f) Authorization to withhold benefits

The authorization described in this subsection, with respect to an individual, is written

authorization provided by the individual to the Director which authorizes the Commissioner to withhold past-due benefits under section 423 of this title to which such individual is entitled in order to pay the amount withheld to the Office of Personnel Management for any disability overpayments made to such individual.

(g) Expenses

The Director shall pay to the Social Security Administration an amount equal to the amount estimated by the Commissioner as the total cost incurred by the Social Security Administration in carrying out this section for each calendar quarter.

(Aug. 14, 1935, ch. 531, title XI, § 1127A, as added Pub. L. 114–74, title VIII, § 841(a), Nov. 2, 2015, 129 Stat. 615.)

EFFECTIVE DATE

Pub. L. 114–74, title VIII, § 841(b), Nov. 2, 2015, 129 Stat. 617, provided that: ''The amendment made by this section [enacting this section] shall apply to past-due disability insurance benefits payable on or after the date that is 1 year after the date of the enactment of this section [Nov. 2, 2015].''

§ 1320a–7. Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title):

(1) Conviction relating to fraud

Any individual or entity that has been convicted for an offense which occurred after August 21, 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1) of this section) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation or audit

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation or audit related to—

(i) any offense described in paragraph (1) or in subsection (a); or

(ii) the use of funds received, directly or indirectly, from any Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) Misdemeanor conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII of this chapter or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX of this chapter, or

(ii) an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX of this chapter) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1) of this section) or a member of the household of the person (as defined in subsection (j)(2) of this section) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the en-

tity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing, ordering, referring for furnishing, or certifying the need for items or services for which payment may be made under subchapter XVIII of this chapter or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1395aa(a) of this title (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1396a(a) of this title and under section 1396b(g) of this title.

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section 1396b(q) of this title), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action

Any hospital that fails to comply substantially with a corrective action required under section 1395ww(f)(2)(B) of this title.

(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX of this chapter.

(15) Individuals controlling a sanctioned entity

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section 1320a–7a(i)(6)[1] of this title) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity.

(B) For purposes of subparagraph (A), the term ''sanctioned entity'' means an entity—

(i) that has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(16) Making false statements or misrepresentation of material facts

Any individual or entity that knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, agreement, bid, or contract to participate or enroll as a provider of services or supplier under a Federal health care program (as defined in section 1320a–7b(f) of this title), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection

[1] So in original. Probably should be section ''1320a–7a(i)(7)''.

(b)(12) of this section or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1320a–7b(f) of this title) who determines that the exclusion would impose a hardship on beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) of this section with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12) of this section, the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b) of this section, the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5) of this section, the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B) of this section, the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction occurring on or after August 5, 1997, if the individual has (before, on, or after August 5, 1997) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII of this chapter and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII of this chapter.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII of this chapter.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(4) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term ''State health care program'' means—

(1) a State plan approved under subchapter XIX of this chapter,

(2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter,

(3) any program receiving funds under division A[2] of subchapter XX of this chapter or from an allotment to a State under such division, or

(4) a State child health plan approved under subchapter XXI of this chapter.

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been ''convicted'' of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of immediate family member and member of household

For purposes of subsection (b)(8)(A)(iii) of this section:

(1) The term ''immediate family member'' means, with respect to a person—

(A) the husband or wife of the person;

(B) the natural or adoptive parent, child, or sibling of the person;

(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

(E) the grandparent or grandchild of the person; and

(F) the spouse of a grandparent or grandchild of the person.

(2) The term ''member of the household'' means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.

(Aug. 14, 1935, ch. 531, title XI, §1128, as added Pub. L. 96–499, title IX, §913(a), Dec. 5, 1980, 94 Stat. 2619; amended Pub. L. 97–35, title XXI, §2105(b), title XXIII, §2353(k), Aug. 13, 1981, 95 Stat. 791, 873; Pub. L. 98–369, div. B, title III, §2333(a), (b), July 18, 1984, 98 Stat. 1089; Pub. L. 99–509, title IX, §9317(c), Oct. 21, 1986, 100 Stat. 2008; Pub. L. 100–93, §2, Aug. 18, 1987, 101 Stat. 680; Pub. L. 100–203, title IV, §4118(e)(2)–(5), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, §411(k)(10)(D), July 1, 1988, 102 Stat. 795; Pub. L. 100–360, title IV, §411(k)(10)(C), July 1, 1988, 102 Stat. 795; Pub. L. 101–239, title VI, §6411(d)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101–508, title IV, §4164(b)(3), Nov. 5, 1990, 104 Stat. 1388–102; Pub. L. 102–54, §13(q)(3)(A)(ii),

[2] See References in Text note below.

June 13, 1991, 105 Stat. 279; Pub. L. 103–296, title I, § 108(b)(9), title II, § 206(b)(2), Aug. 15, 1994, 108 Stat. 1483, 1513; Pub. L. 104–191, title II, §§ 211–213, Aug. 21, 1996, 110 Stat. 2003–2005; Pub. L. 105–33, title IV, §§ 4301, 4303(a), 4331(c), 4901(b)(2), Aug. 5, 1997, 111 Stat. 382, 396, 570; Pub. L. 108–173, title IX, § 949, Dec. 8, 2003, 117 Stat. 2426; Pub. L. 111–148, title VI, §§ 6402(d)(1), (e), (k), 6406(c), 6408(c), 6703(d)(3)(A), Mar. 23, 2010, 124 Stat. 757, 759, 763, 769, 772, 804.)

REFERENCES IN TEXT

Division A of subchapter XX, referred to in subsec. (h)(3), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–148, § 6408(c), inserted ''or audit'' after ''investigation'' in the heading, substituted ''investigation or audit related to—'' for ''investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.'', and added cls. (i) and (ii).

Subsec. (b)(11). Pub. L. 111–148, § 6406(c), inserted '', ordering, referring for furnishing, or certifying the need for'' after ''furnishing''.

Subsec. (b)(16). Pub. L. 111–148, § 6402(d)(1), added par. (16).

Subsec. (c)(3)(B). Pub. L. 111–148, § 6402(k), substituted ''beneficiaries (as defined in section 1320a–7a(i)(5) of this title) of that program'' for ''individuals entitled to benefits under part A of subchapter XVIII of this chapter or enrolled under part B of such subchapter, or both''.

Subsec. (f)(4). Pub. L. 111–148, § 6402(e), added par. (4).

Subsec. (h)(3). Pub. L. 111–148, § 6703(d)(3)(A), inserted ''division A of'' before ''subchapter XX'' and substituted ''such division'' for ''such subchapter''.

2003—Subsec. (c)(3)(B). Pub. L. 108–173 amended first sentence generally. Prior to amendment, first sentence read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''

1997—Subsec. (a). Pub. L. 105–33, § 4331(c)(1), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h) of this section)'' in introductory provisions.

Subsec. (b). Pub. L. 105–33, § 4331(c)(2), substituted ''any Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''any program under subchapter XVIII of this chapter and may direct that the following individuals and entities be excluded from participation in any State health care program'' in introductory provisions.

Subsec. (b)(8)(A)(iii). Pub. L. 105–33, § 4303(a)(1), added cl. (iii).

Subsec. (c)(3)(A). Pub. L. 105–33, § 4301(1), inserted ''or in the case described in subparagraph (G)'' after ''subsection (b)(12) of this section''.

Subsec. (c)(3)(B), (D). Pub. L. 105–33, § 4301(2), substituted ''Subject to subparagraph (G), in the case'' for ''In the case''.

Subsec. (c)(3)(G). Pub. L. 105–33, § 4301(3), added subpar. (G).

Subsec. (h)(4). Pub. L. 105–33, § 4901(b)(2), added par. (4).

Subsec. (j). Pub. L. 105–33, § 4303(a)(2), added subsec. (j).

1996—Subsec. (a)(3). Pub. L. 104–191, § 211(a)(1), added par. (3).

Subsec. (a)(4). Pub. L. 104–191, § 211(b)(1), added par. (4).

Subsec. (b)(1). Pub. L. 104–191, § 211(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''

Subsec. (b)(3). Pub. L. 104–191, § 211(b)(2), substituted ''Misdemeanor conviction'' for ''conviction'' in heading and ''criminal offense consisting of a misdemeanor'' for ''criminal offense'' in text.

Subsec. (b)(15). Pub. L. 104–191, § 213, added par. (15).

Subsec. (c)(3)(D) to (F). Pub. L. 104–191, § 212, added subpars. (D) to (F).

1994—Subsec. (b)(7). Pub. L. 103–296, § 206(b)(2)(A), substituted ''section 1320a–7a, 1320a–7b, or 1230a–8 of this title'' for ''section 1320a–7a of this title or section 1320a–7b of this title''.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, § 206(b)(2)(B), inserted ''or 1320a–8'' after ''section 1320a–7a''.

Subsec. (f)(1). Pub. L. 103–296, § 108(b)(9)(A), inserted before period at end '', except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

Subsec. (f)(3). Pub. L. 103–296, § 206(b)(2)(C), inserted '', 1320a–8,'' after ''sections 1320a–7a''.

Pub. L. 103–296, § 108(b)(9)(B), inserted before period at end '', except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary''.

1991—Subsec. (b)(5)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(9). Pub. L. 101–508 substituted ''section 1320a–3 of this title, section 1320a–3a of this title,'' for ''section 1320a–3 of this title''.

1989—Subsec. (b)(4)(A). Pub. L. 101–239 inserted ''or the right to apply for or renew such a license'' after ''lost such a license''.

1988—Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(3)–(5), which amended subsec. (b)(8)(A)(i), (d)(1), (3)(A), and (i). See 1987 Amendment notes below.

Subsec. (d)(3)(B)(ii). Pub. L. 100–360, § 411(k)(10)(C), struck out ''under a program'' after ''longer than the period of exclusion''.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(8)(A)(i). Pub. L. 100–203, § 4118(e)(3), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted at beginning ''who has a direct or indirect ownership or control interest of 5 percent or more in the entity or''.

Subsec. (d)(1). Pub. L. 100–203, § 4118(e)(4)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section and section 1320a–7a of this title'' for ''subsection (b) of this section''.

Subsec. (d)(3)(A). Pub. L. 100–203, § 4118(e)(4)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), struck out ''under a program'' after ''any period of exclusion''.

Subsec. (d)(3)(B). Pub. L. 100–203, § 4118(e)(2), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (i). Pub. L. 100–203, § 4118(e)(5)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''an individual or entity'' for ''a physician or other individual'' in introductory provisions.

Pub. L. 100–203, § 4118(e)(5)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting ''individual or entity'' for ''physician or other individual'' each place it appears, was executed by substituting ''individual or entity'' for ''physician or individual'' in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, § 4118(e)(5)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''first offender, deferred adjudication, or other arrangement or program'' for ''first offender or other program''.

1986—Subsec. (f). Pub. L. 99–509 added subsec. (f).

1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted ''Any person or entity'' for ''Any person'' and ''(a), (b), or (c)'' for ''(a) or (b)''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2105(b)(1), struck out '', for such period as he may deem appropriate,'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2353(k), substituted in subpar. (A) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter,'' and in subpar. (B) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter''.

Subsecs. (b) to (d). Pub. L. 97–35, § 2105(b)(2)–(4), added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted ''subsection (a) or (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title VI, § 6406(d), Mar. 23, 2010, 124 Stat. 769, provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395cc of this title] shall apply to orders, certifications, and referrals made on or after January 1, 2010.''

Pub. L. 111–148, title VI, § 6408(d), Mar. 23, 2010, 124 Stat. 772, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1320a–7a and 1395w–27 of this title] shall apply to acts committed on or after January 1, 2010.

''(2) EXCEPTION.—The amendments made by subsection (b)(1) [amending section 1395w–27 of this title] take effect on the date of enactment of this Act [Mar. 23, 2010].''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title IV, § 4303(b), Aug. 5, 1997, 111 Stat. 383, provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 45 days after the date of the enactment of this Act [Aug. 5, 1997].''

Amendments by section 4331(c) of Pub. L. 105–33 effective Aug. 5, 1997, see section 4331(f)(2) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title II, § 218, Aug. 21, 1996, 110 Stat. 2009, provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle B, §§ 211–218, of title II of Pub. L. 104–191, amending this section and sections 1320a–7b, 1320c–5, and 1395mm of this title] shall take effect January 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(9) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Pub. L. 103–296, title II, § 206(b)(3), Aug. 15, 1994, 108 Stat. 1513, provided that: ''The amendments made by this subsection [enacting section 1320a–8 of this title and amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, § 6411(d)(4)[(A)], Dec. 19, 1989, 103 Stat. 2271, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

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 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–93, § 15, Aug. 18, 1987, 101 Stat. 698, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r–2 of this title, amending this section, sections 704, 1320a–3, 1320a–5, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

''(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [42 U.S.C. 1320a–7(c)(3)(B)] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

''(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r–2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements 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 the enactment of this Act.

''(3) Subsection (j) of section 1128A of the Social Security Act [42 U.S.C. 1320a–7a(j)] (as added by section 3(f)

of this Act) takes effect on the date of the enactment of this Act.

''(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [42 U.S.C. 1320a–7a(a)(1)(C)(ii), (iii)], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

''(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

''(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [42 U.S.C. 1320a–7(b)(8)(B)(iii)] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [42 U.S.C. 1395 et seq.] if payment to the person has been denied under section 1862(d) of the Social Security Act [42 U.S.C. 1395y(d)], as in effect before the effective date specified in subsection (a).''

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title IX, § 9317(d)(3), Oct. 21, 1986, 100 Stat. 2009, provided that: ''The provisions—

''(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [42 U.S.C. 1320a–7(f)(1)–(3)] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) of paragraph (4) of such section [42 U.S.C. 1320a–7(f)(4)] shall apply to participation in a program entered into on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, § 2333(c), July 18, 1984, 98 Stat. 1089, provided that: ''The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(k) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1320a–7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5) of this section) that—

(1) knowingly presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1) of this section), a claim (as defined in subsection (i)(2) of this section) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physician's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified,

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the Federal health care program (as defined in section 1320a–7b(f) of this title) under which the claim was made pursuant to Federal law.[1]

(E) is for a pattern of medical or other items or services that a person knows or should know are not medically necessary;

(2) knowingly presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX of this chapter) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title;

(3) knowingly gives or causes to be given to any person, with respect to coverage under subchapter XVIII of this chapter of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;

(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under subchapter XVIII of this chapter or a State health care program in accordance with this subsection or under section 1320a–7 of this title and who, at the time of a violation of this subsection—

(A) retains a direct or indirect ownership or control interest in an entity that is participating in a program under subchapter XVIII of this chapter or a State health care program, and who knows or should know of

[1] So in original. Probably should be ''law, or''.

the action constituting the basis for the exclusion; or

(B) is an officer or managing employee (as defined in section 1320a–5(b) of this title) of such an entity;

(5) offers to or transfers remuneration to any individual eligible for benefits under subchapter XVIII of this chapter, or under a State health care program (as defined in section 1320a–7(h) of this title) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under subchapter XVIII of this chapter, or a State health care program (as so defined);

(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title), for the provision of items or services for which payment may be made under such a program;

(7) commits an act described in paragraph (1) or (2) of section 1320a–7b(b) of this title;

(8)[2] knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or[3]

(9)[4] fails to grant timely access, upon reasonable request (as defined by the Secretary in regulations), to the Inspector General of the Department of Health and Human Services, for the purpose of audits, investigations, evaluations, or other statutory functions of the Inspector General of the Department of Health and Human Services;

(8)[2] orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program (as so defined), in the case where the person knows or should know that a claim for such medical or other item or service will be made under such a program;

(9)[4] knowingly makes or causes to be made any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program (as so defined), including Medicare Advantage organizations under part C of subchapter XVIII, prescription drug plan sponsors under part D of subchapter XVIII, medicaid managed care organizations under subchapter XIX, and entities that apply to participate as providers of services or suppliers in such managed care organizations and such plans;[5]

(10) knows of an overpayment (as defined in paragraph (4) of section 1320a–7k(d) of this title) and does not report and return the overpayment in accordance with such section;

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $10,000 for each item or service (or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs; in cases under paragraph (7), $50,000 for each such act,[6] in cases under paragraph (8),[7] $50,000 for each false record or statement,[6] or[8] in cases under paragraph (9),[9] $15,000 for each day of the failure described in such paragraph);[10] or in cases under paragraph (9),[11] $50,000 for each false statement or misrepresentation of a material fact). In addition, such a person shall be subject to an assessment of not more than 3 times the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim (or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact). In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the Federal health care programs (as defined in section 1320a–7b(f)(1) of this title) and to direct the appropriate State agency to exclude the person from participation in any State health care program.

(b) Payments to induce reduction or limitation of services

(1) If a hospital or a critical access hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit medically necessary services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter, and

(B) are under the direct care of the physician,

the hospital or a critical access hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each

[2] So in original. Two pars. (8) have been enacted.

[3] So in original. The word ''or'' probably should not appear.

[4] So in original. Two pars. (9) have been enacted.

[5] So in original. Probably should be followed by ''or''.

[6] So in original. The comma probably should be a semicolon.

[7] So in original. Probably is a reference to the first paragraph (8).

[8] So in original. The word ''or'' probably should not appear.

[9] So in original. Probably is a reference to the first paragraph (9).

[10] So in original. Probably should be ''paragraph;''.

[11] So in original. Probably is a reference to the second paragraph (9).

individual described in such paragraph with respect to whom the payment is made.

(3)(A) Any physician who executes a document described in subparagraph (B) with respect to an individual knowing that all of the requirements referred to in such subparagraph are not met with respect to the individual shall be subject to a civil monetary penalty of not more than the greater of—

(i) $5,000, or

(ii) three times the amount of the payments under subchapter XVIII of this chapter for home health services which are made pursuant to such certification.

(B) A document described in this subparagraph is any document that certifies, for purposes of subchapter XVIII of this chapter, that an individual meets the requirements of section 1395f(a)(2)(C) or 1395n(a)(2)(A) of this title in the case of home health services furnished to the individual.

(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty, assessment, or exclusion

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court[12] the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing be-

[12] So in original. Probably should not be capitalized.

fore the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1320a–7b(f) of this title), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Insurance Portability and Accountability Act of 1996 (as estimated by the Secretary) shall be deposited into the Federal Hospital Insurance Trust Fund pursuant to section 1395i(k)(2)(C) of this title.

(4) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty, assessment, or exclusion

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

(i) Definitions

For the purposes of this section:

(1) The term ''State agency'' means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V of this chapter or division A[13] of subchapter XX of this chapter.

(2) The term ''claim'' means an application for payments for items and services under a Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) The term ''item or service'' includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term ''agency of the United States'' includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a Federal health care program (as so defined).

(5) The term ''beneficiary'' means an individual who is eligible to receive items or services for which payment may be made under a Federal health care program (as so defined) but does not include a provider, supplier, or practitioner.

(6) The term ''remuneration'' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or

[13] See References in Text note below.

services for free or for other than fair market value. The term ''remuneration'' does not include—

(A) the waiver of coinsurance and deductible amounts by a person, if—

(i) the waiver is not offered as part of any advertisement or solicitation;

(ii) the person does not routinely waive coinsurance or deductible amounts; and

(iii) the person—

(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need; or

(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts;

(B) subject to subsection (n) of this section, any permissible practice described in any subparagraph of section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;

(C) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payers, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after August 21, 1996;

(D) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated;

(E) a reduction in the copayment amount for covered OPD services under section 1395*l*(t)(5)(B)[13] of this title; or[8]

(F) any other remuneration which promotes access to care and poses a low risk of harm to patients and Federal health care programs (as defined in section 1320a–7b(f) of this title and designated by the Secretary under regulations);

(G) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services consist of coupons, rebates, or other rewards from a retailer;

(ii) the items or services are offered or transferred on equal terms available to the general public, regardless of health insurance status; and

(iii) the offer or transfer of the items or services is not tied to the provision of other items or services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as defined in section 1320a–7(h) of this title);

(H) the offer or transfer of items or services for free or less than fair market value by a person, if—

(i) the items or services are not offered as part of any advertisement or solicitation;

(ii) the items or services are not tied to the provision of other services reimbursed in whole or in part by the program under subchapter XVIII or a State health care program (as so defined);

(iii) there is a reasonable connection between the items or services and the medical care of the individual; and

(iv) the person provides the items or services after determining in good faith that the individual is in financial need; or

(I) effective on a date specified by the Secretary (but not earlier than January 1, 2011), the waiver by a PDP sponsor of a prescription drug plan under part D of subchapter XVIII or an MA organization offering an MA–PD plan under part C of such subchapter of any copayment for the first fill of a covered part D drug (as defined in section 1395w–102(e) of this title) that is a generic drug for individuals enrolled in the prescription drug plan or MA–PD plan, respectively.

(7) The term ''should know'' means that a person, with respect to information—

(A) acts in deliberate ignorance of the truth or falsity of the information; or

(B) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

(j) Subpoenas

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a–7 of this title to the Inspector General of the Department of Health and Human Services.

(k) Injunctions

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

(*l*) Liability of principal for acts of agent

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal's agent acting within the scope of the agency.

(m) Claims within jurisdiction of other departments or agencies

(1) For purposes of this section, with respect to a Federal health care program not contained in this chapter, references to the Secretary in this section shall be deemed to be references to

the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 (5 U.S.C. App.) with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.

(n) Safe harbor for payment of medigap premiums

(1) Subparagraph (B) of subsection (i)(6) of this section shall not apply to a practice described in paragraph (2) unless—

(A) the Secretary, through the Inspector General of the Department of Health and Human Services, promulgates a rule authorizing such a practice as an exception to remuneration; and

(B) the remuneration is offered or transferred by a person under such rule during the 2-year period beginning on the date the rule is first promulgated.

(2) A practice described in this paragraph is a practice under which a health care provider or facility pays, in whole or in part, premiums for medicare supplemental policies for individuals entitled to benefits under part A of subchapter XVIII of this chapter pursuant to section 426–1 of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128A, as added Pub. L. 97–35, title XXI, § 2105(a), Aug. 13, 1981, 95 Stat. 789; amended Pub. L. 97–248, title I, § 137(b)(26), Sept. 3, 1982, 96 Stat. 380; Pub. L. 98–369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), July 18, 1984, 98 Stat. 1073, 1100; Pub. L. 99–509, title IX, §§ 9313(c)(1), 9317(a), (b), Oct. 21, 1986, 100 Stat. 2003, 2008; Pub. L. 100–93, § 3, Aug. 18, 1987, 101 Stat. 686; Pub. L. 100–203, title IV, §§ 4039(h)(1), 4118(e)(1), (6)–(10), Dec. 22, 1987, 101 Stat. 1330–155, as amended Pub. L. 100–360, title IV, § 411(e)(3), (k)(10)(B)(ii), (D), July 1, 1988, 102 Stat. 775, 794, 795; Pub. L. 100–360, title II, § 202(c)(2), July 1, 1988, 102 Stat. 715; Pub. L. 100–485, title VI, § 608(d)(26)(H)–(K)(i), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(i), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4204(a)(3), 4207(h), formerly 4027(h), 4731(b)(1), 4753, Nov. 5, 1990, 104 Stat. 1388–109, 1388–123, 1388–195, 1388–208, renumbered § 4207(h), Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444; Pub. L. 104–191, title II, §§ 231(a)–(e), (h), 232(a), Aug. 21, 1996, 110 Stat. 2012–2015; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4304(a), (b), 4331(e), 4523(c), Aug. 5, 1997, 111 Stat. 373, 383, 396, 449; Pub. L. 105–277, div. J, title V, § 5201(a), (b)(1), Oct. 21, 1998, 112 Stat. 2681–916; Pub. L. 111–148, title VI, §§ 6402(d)(2), 6408(a), 6703(d)(3)(B), Mar. 23, 2010, 124 Stat. 757, 770, 804; Pub. L. 114–10, title V, § 512(a)(1), Apr. 16, 2015, 129 Stat. 170.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (f)(3), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

Division A of subchapter XX, referred to in subsec. (i)(1), was in the original a reference to subtitle 1 of title XX, which was translated as if referring to subtitle A of title XX of the Social Security Act, to reflect the probable intent of Congress. Title XX of the Act, enacting subchapter XX of this chapter, does not contain a subtitle 1.

Section 1395*l*(t)(5)(B) of this title, referred to in subsec. (i)(6)(E), was redesignated section 1395*l*(t)(8)(B) of this title by Pub. L. 106–113, div. B, § 1000(a)(6) [title II, §§ 201(a)(1), 202(a)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A–336, 1501A–342.

The Inspector General Act of 1978, referred to in subsec. (m)(2)(B), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2015—Subsec. (b)(1). Pub. L. 114–10 inserted ''medically necessary'' after ''reduce or limit''.

2010—Subsec. (a). Pub. L. 111–148, § 6408(a)(3)(B), which directed substitution of ''act, in cases under paragraph (8), $50,000 for each false record or statement, or in cases under paragraph (9), $15,000 for each day of the failure described in such paragraph)'' for ''act)'' in first sentence, was executed by making the substitution for ''act'' to reflect the probable intent of Congress. See amendment by Pub. L. 111–148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111–148, § 6408(a)(3)(A), which directed substitution of ''in cases under paragraph (7)'' for ''or in cases under paragraph (7)'' in first sentence, was executed by making the substitution for ''in cases under paragraph (7)'' resulting in no change in text and to reflect the probable intent of Congress. See amendment by Pub. L. 111–148, § 6402(d)(2)(A)(iv) below.

Pub. L. 111–148, § 6402(d)(2)(A)(iv), (v), in concluding provisions, struck out ''or'' after ''prohibited relationship occurs;'' and substituted ''act; or in cases under paragraph (9), $50,000 for each false statement or misrepresentation of a material fact)'' for ''act)'' and ''purpose; or in cases under paragraph (9), an assessment of not more than 3 times the total amount claimed for each item or service for which payment was made based upon the application containing the false statement or misrepresentation of a material fact)'' for ''purpose)''.

Subsec. (a)(1)(D). Pub. L. 111–148, § 6402(d)(2)(A)(i), which directed substitution of ''was excluded from the Federal health care program (as defined in section

1320a–7b(f) of this title) under which the claim was made pursuant to Federal law.'' for '' 'was excluded' and all that follows through the period at the end'', was executed by making the substitution for ''was excluded from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a–7, 1320c–5, 1320c–9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395u(j)(2) of this title, or'', to reflect the probable intent of Congress, because there was no period at the end.

Subsec. (a)(6). Pub. L. 111–148, §§6402(d)(2)(A)(ii), 6408(a)(1), amended par. (6) identically, striking out ''or'' at the end.

Subsec. (a)(8), (9). Pub. L. 111–148, §6408(a)(2), added pars. (8) and (9) relating to false or fraudulent claims for payment for items and services furnished under a Federal health care program and failure to grant timely access to the Inspector General of the Department of Health and Human Services, respectively.

Pub. L. 111–148, §6402(d)(2)(A)(iii), added pars. (8) and (9) relating to orders or prescriptions for persons excluded from a Federal health care program; and false statements, omissions, or misrepresentations in applications, bids, or contracts to participate or enroll as a provider of services or a supplier under a Federal health care program, respectively.

Subsec. (a)(10). Pub. L. 111–148, §6402(d)(2)(A)(iii), added par. (10).

Subsec. (i)(1). Pub. L. 111–148, §6703(d)(3)(B), inserted ''division A of'' after ''subchapter V of this chapter or''.

Subsec. (i)(6)(C). Pub. L. 111–148, §6402(d)(2)(B)(i), struck out ''or'' at the end.

Subsec. (i)(6)(D). Pub. L. 111–148, §6402(d)(2)(B)(ii), in subpar. (D) relating to incentives given to individuals to promote delivery, substituted a semicolon for the period.

Subsec. (i)(6)(E). Pub. L. 111–148, §6402(d)(2)(B)(iii), redesignated subpar. (D) relating to a reduction in copayment amount for covered OPD services as (E) and substituted ''; or'' for the period.

Subsec. (i)(6)(F) to (I). Pub. L. 111–148, §6402(d)(2)(B)(iv), added pars. (F) to (I).

1998—Subsec. (i)(6)(B). Pub. L. 105–277, §5201(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (n). Pub. L. 105–277, §5201(b)(1), added subsec. (n).

1997—Subsec. (a). Pub. L. 105–33, §4304(b)(2), in concluding provisions, substituted ''occurs; or in cases under paragraph (7), $50,000 for each such act).'' for ''occurs).'' and inserted ''(or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose)'' after ''of such claim''.

Subsec. (a)(6). Pub. L. 105–33, §4304(a), added par. (6).

Subsec. (a)(7). Pub. L. 105–33, §4304(b)(1), added par. (7).

Subsec. (b)(1). Pub. L. 105–33, §4201(c)(1), substituted ''critical access'' for ''rural primary care'' in introductory and concluding provisions.

Subsec. (i)(6)(A)(iii). Pub. L. 105–33, §4331(e)(1), inserted ''or'' at end of subcl. (I), struck out ''or'' at end of subcl. (II), and struck out subcl. (III) which read as follows: ''provides for any permissible waiver as specified in section 1320a–7b(b)(3) of this title or in regulations issued by the Secretary;''.

Subsec. (i)(6)(B). Pub. L. 105–33, §4523(c)(1), which directed amendment of par. (6) by striking ''or'' at end of subpar. (B), could not be executed because the word ''or'' did not appear at end of subpar. (B) subsequent to amendment by Pub. L. 105–33, §4331(e)(2), (3). See below.

Pub. L. 105–33, §4331(e)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (i)(6)(C). Pub. L. 105–33, §4523(c)(2), which directed amendment of par. (6) by substituting ''; or'' for the period at end of subpar. (C), could not be executed because there was not a period at the end of subpar. (C) subsequent to amendment by Pub. L. 105–33, §4331(e)(2). See below.

Pub. L. 105–33, §4331(e)(2), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (i)(6)(D). Pub. L. 105–33, §4523(c), added subpar. (D) relating to a reduction in copayment amount for covered OPD services.

Pub. L. 105–33, §4331(e)(2), redesignated subpar. (C), relating to incentives given to individuals to promote delivery, as (D).

1996—Subsec. (a). Pub. L. 104–191, §231(c), in concluding provisions, substituted ''$10,000'' for ''$2,000'', inserted ''; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs'' after ''false or misleading information was given'', and substituted ''3 times the amount'' for ''twice the amount''.

Pub. L. 104–191, §231(a)(1), in concluding provisions, substituted ''Federal health care programs (as defined in section 1320a–7b(f)(1) of this title)'' for ''programs under subchapter XVIII of this chapter''.

Subsec. (a)(1). Pub. L. 104–191, §231(d)(1)(A), inserted ''knowingly'' before ''presents'' in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 104–191, §231(e)(1), substituted ''claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,'' for ''claimed,''.

Subsec. (a)(1)(E). Pub. L. 104–191, §231(e)(2)–(4), added subpar. (E).

Subsec. (a)(2). Pub. L. 104–191, §231(d)(1)(A), inserted ''knowingly'' before ''presents''.

Subsec. (a)(3). Pub. L. 104–191, §231(d)(1)(B), substituted ''knowingly gives or causes to be given'' for ''gives''.

Subsec. (a)(4). Pub. L. 104–191, §231(b), added par. (4).

Subsec. (a)(5). Pub. L. 104–191, §231(h)(1), added par. (5).

Subsec. (b)(3). Pub. L. 104–191, §232(a), added par. (3).

Subsec. (f)(3), (4). Pub. L. 104–191, §231(a)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (i)(2). Pub. L. 104–191, §231(a)(3)(A), substituted ''a Federal health care program (as defined in section 1320a–7b(f) of this title)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(4). Pub. L. 104–191, §231(a)(3)(B), substituted ''a Federal health care program (as so defined)'' for ''a health insurance or medical services program under subchapter XVIII or XIX of this chapter''.

Subsec. (i)(5). Pub. L. 104–191, §231(a)(3)(C), substituted ''a Federal health care program (as so defined)'' for ''subchapter V, XVIII, XIX, or XX of this chapter''.

Subsec. (i)(6). Pub. L. 104–191, §231(h)(2), added par. (6).

Subsec. (i)(7). Pub. L. 104–191, §231(d)(2), added par. (7).

Subsec. (m). Pub. L. 104–191, §231(a)(4), added subsec. (m).

1990—Subsec. (b)(1). Pub. L. 101–508, §4731(b)(1), struck out ''or an entity with a contract under section 1396b(m) of this title'' before ''knowingly makes a payment'' in introductory provisions.

Pub. L. 101–508, §4204(a)(3), struck out '', an eligible organization with a risk-sharing contract under section 1395mm of this title,'' after ''primary care hospital'' in introductory provisions, struck out ''or organization'' after ''primary care hospital'' in concluding provisions, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of an eligible organization or an entity, are enrolled with the organization or entity, and''.

Subsec. (j). Pub. L. 101–508, §4753, made an amendment to subsec. (j) identically to that of Pub. L. 101–508, §4207(h). See below.

Pub. L. 101–508, §4207(h), formerly §4027(h), as renumbered by Pub. L. 103–432, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C), (4). Pub. L. 101–234 repealed Pub. L. 100–360, §202(c), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(1). Pub. L. 101–239 substituted ''hospital or a rural primary care hospital'' for ''hospital'' in introductory and concluding provisions.

1988—Subsec. (a). Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(10)(A), see 1987 Amendment note below.

Subsec. (a)(1). Pub. L. 100–360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, §608(d)(26)(H), amended directory language of Pub. L. 100–203, §4118(e)(1), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(i), added Pub. L. 100–203, §4118(e)(6), see 1987 Amendment note below.

Pub. L. 100–360, §202(c)(2)(A), struck out ''or'' after semicolon.

Subsec. (a)(2)(C). Pub. L. 100–360, §202(c)(2)(B), inserted ''or to be a participating pharmacy under section 1395u(*o*) of this title'' after ''section 1395u(h)(1) of this title''.

Subsec. (a)(3). Pub. L. 100–360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, §608(d)(26)(H), made technical amendment to directory language of Pub. L. 100–203, §4118(e)(1)(A), see 1987 Amendment note below.

Subsec. (a)(4). Pub. L. 100–360, §202(c)(2)(C)–(E), added par. (4) relating to participating or nonparticipating pharmacies.

Subsec. (b)(1)(A). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(1)(A), see 1987 Amendment note below.

Subsec. (b)(2). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(1)(B), see 1987 Amendment note below.

Subsec. (c)(1). Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(7), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(8), see 1987 Amendment note below.

Subsec. (i)(1). Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(9), see 1987 Amendment note below.

Subsec. (i)(2). Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(10)(B), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–485, §608(d)(26)(J), amended directory language of Pub. L. 100–203, §4118(e)(10)(C), see 1987 Amendment note below.

Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(10)(C), see 1987 Amendment note below.

Subsec. (*l*). Pub. L. 100–485, §608(d)(26)(I), inserted ''for penalties, assessments, and an exclusion'' after ''liable''.

Pub. L. 100–360, §411(k)(10)(B)(ii)(III), added Pub. L. 100–203, §4118(e)(1)(B), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, §4118(e)(10)(A), as added by Pub. L. 100–360, §411(k)(10)(D), inserted '', but excluding a beneficiary, as defined in subsection (i)(5) of this section'' in introductory provisions.

Pub. L. 100–93, §3(a)(3)(B), in concluding provisions, inserted ''(or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given)'' before period at end of first sentence, and inserted at end ''In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.''

Subsec. (a)(1). Pub. L. 100–203, §4118(e)(1)(A), formerly §4118(e)(1), as amended by Pub. L. 100–360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, §608(d)(26)(H), substituted ''or should know'' for ''or has reason to know'' in subpars. (A) to (C).

Pub. L. 100–93, §3(a)(1), substituted ''the Secretary determines'' for ''the Secretary determines is for a medical or other item or service'' in introductory provisions and substituted subpars. (A) to (D) for former subpars. (A) and (B) which read as follows:

''(A) that the person knows or has reason to know was not provided as claimed, or

''(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1320a–7, 1320c–9(b), or 1395y(d) of this title, or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings; or''.

Subsec. (a)(1)(D). Pub. L. 100–203, §4118(e)(6), as added by Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(i), substituted ''excluded from'' for ''excluded under'' and inserted ''or as a result of the application of the provisions of section 1395u(j)(2) of this title''.

Subsec. (a)(2). Pub. L. 100–93, §3(a)(2), inserted ''(or other requirement of a State plan under subchapter XIX of this chapter)'' after ''State agency'' in subpar. (B) and added subpar. (D).

Subsec. (a)(3). Pub. L. 100–203, §4118(e)(1)(A), as amended by Pub. L. 100–360, §411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, §608(d)(26)(H), substituted ''or should know'' for ''or has reason to know''.

Pub. L. 100–93, §3(a)(3)(A), added par. (3).

Subsec. (b)(1)(A). Pub. L. 100–203, §4039(h)(1)(A), as added by Pub. L. 100–360, §411(e)(3), substituted ''subchapter XVIII'' for ''subchapter XVII''.

Subsec. (b)(2). Pub. L. 100–203, §4039(h)(1)(B), as added by Pub. L. 100–360, §411(e)(3), substituted ''$2,000 for each'' for ''$2,000 for''.

Subsec. (c)(1). Pub. L. 100–203, §4118(e)(7), as added by Pub. L. 100–360, §411(k)(10)(D), inserted '', request for payment, or other occurrence described in this section'' and '', the request for payment was made, or the occurrence took place''.

Pub. L. 100–93, §3(b), (c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100–93, §3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100–93, §3(d), substituted ''bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid'' for ''equal to the State's share of the amount paid by the State agency''.

Subsec. (g). Pub. L. 100–93, §3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places.

Subsec. (h). Pub. L. 100–93, §3(c), (e), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places and inserted ''the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),'' after ''professional organization,''.

Subsec. (i). Pub. L. 100–203, §4118(e)(8), as added by Pub. L. 100–360, §411(k)(10)(D), substituted ''this section'' for ''this subsection'' in introductory provisions.

Subsec. (i)(1). Pub. L. 100–203, §4118(e)(9), as added by Pub. L. 100–360, §411(k)(10)(D), inserted ''or subchapter XX of this chapter''.

Subsec. (i)(2). Pub. L. 100–203, §4118(e)(10)(B), as added by Pub. L. 100–360, §411(k)(10)(D), substituted ''for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter'' for ''submitted by—

''(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

''(B) a person, agency, or organization that furnishes an item or service for which medical assist-

ance is provided under subchapter XIX of this chapter, or

''(C) a person, agency, or organization that provides an item or service for which payment is made under subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter''.

Subsec. (i)(5). Pub. L. 100–203, § 4118(e)(10)(C), as added by Pub. L. 100–360, § 411(k)(10)(D), and amended by Pub. L. 100–485, § 608(d)(26)(J), added par. (5).

Subsecs. (j), (k). Pub. L. 100–93, § 3(f), added subsecs. (j) and (k).

Subsec. (*l*). Pub. L. 100–203, § 4118(e)(1)(B), as added by Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added subsec. (*l*).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9313(c)(1)(B), substituted ''(i)(1)'' and ''(i)(2)'' for ''(h)(1)'' and ''(h)(2)'', respectively.

Subsec. (b). Pub. L. 99–509, § 9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99–509, § 9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99–509, § 9317(b), added par. (4).

Subsec. (d). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–509, § 9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' and ''subsection (e)'' for ''subsection (d)''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–509, § 9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted ''subsection (a) or (b)'' for ''subsection (a)''. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–509, § 9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98–369, § 2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98–369, § 2354(a)(3), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

1982—Subsec. (a). Pub. L. 97–248 redesignated as part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted ''or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings;'' for ''or 1395cc(b)(2) of this title,'', and in par. (2) substituted ''presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged'' for ''is submitted in violation of an agreement between the person and the United States or a State agency''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–10, title V, § 512(a)(2), Apr. 16, 2015, 129 Stat. 170, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments made on or after the date of the enactment of this Act [Apr. 16, 2015].''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 6408(a) of Pub. L. 111–148 applicable to acts committed on or after Jan. 1, 2010, see section 6408(d)(1) of Pub. L. 111–148, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. J, title V, § 5201(d), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The amendments made by this section [amending this section and section 1320a–7d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of 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.

Pub. L. 105–33, title IV, § 4304(c), Aug. 5, 1997, 111 Stat. 384, provided that:

''(1) CONTRACTS WITH EXCLUDED PERSONS.—The amendments made by subsection (a) [amending this section] shall apply to arrangements and contracts entered into after the date of the enactment of this Act [Aug. 5, 1997].

''(2) KICKBACKS.—The amendments made by subsection (b) [amending this section] shall apply to acts committed after the date of the enactment of this Act.''

Amendment by section 4331(e) of Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title II, § 231(i), Aug. 21, 1996, 110 Stat. 2015, provided that: ''The amendments made by this section [amending this section and sections 1320c–5 and 1395mm of this title] shall apply to acts or omissions occurring on or after January 1, 1997.''

Pub. L. 104–191, title II, § 232(b), Aug. 21, 1996, 110 Stat. 2015, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to certifications made on or after the date of the enactment of this Act [Aug. 21, 1996].''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–234, title II, § 201(c), Dec. 13, 1989, 103 Stat. 1981, provided that: ''The provisions of this section [amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, 1396d, and 1396n of this title, repealing section 1395w–3 of this title, and amending or repealing provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] shall take effect January 1, 1990.''

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.

Amendment by section 202(c)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (k)(10)(B)(ii), (D) of 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 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, § 4118(e)(14), formerly § 4118(e)(3), Dec. 22, 1987, 101 Stat. 1330–155, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(B)(i), (D), July 1, 1988, 102 Stat. 794, 795, provided that: ''The amendments made by paragraph (1)

[amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100–93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, without regard to the date the physician's misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100–93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title IX, §9313(c)(2), Oct. 21, 1986, 100 Stat. 2003, as amended by Pub. L. 100–203, title IV, §4016, Dec. 22, 1987, 101 Stat. 1330–64; Pub. L. 101–239, title VI, §6207(a), Dec. 19, 1989, 103 Stat. 2245, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) payments by eligible organizations or entities occurring on or after April 1, 1991.''

Pub. L. 99–509, title IX, §9317(d)(1), (2), Oct. 21, 1986, 100 Stat. 2009, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

''(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of 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 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

REGULATIONS

Pub. L. 105–277, div. J, title V, §5201(e), Oct. 21, 1998, 112 Stat. 2681–917, provided that: ''The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section [amending this section and section 1320a–7d of this title] in a timely manner.''

GAO STUDY AND REPORT ON IMPACT OF SAFE HARBOR ON MEDIGAP POLICIES

Pub. L. 105–277, div. J, title V, §5201(b)(2), Oct. 21, 1998, 112 Stat. 2681–917, which provided that, if a permissible practice was promulgated under subsec. (n)(1)(A) of this section, the Comptroller General was to conduct a study comparing any disproportionate impact on specific issuers of medicare supplemental policies due to adverse selection in enrolling medicare ESRD beneficiaries before Aug. 21, 1996, and 1 year after the date of promulgation of such permissible practice under subsec. (n)(1)(A) of this section and was to submit a report to Congress on such study with recommendations concerning extension of the time limitation under subsec. (n)(1)(B), was repealed by Pub. L. 111–8, div. G, title I, §1301(c), Mar. 11, 2009, 123 Stat. 829.

REPEAL OF 1988 EXPANSION OF MEDICARE PART B BENEFITS

Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA [sections 201 to 208 of Pub. L. 100–360, enacting section 1395w–3 of this title, amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, and 1396n of this title, and enacting provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA [amending section 1395u of this title and enacting provisions set out as a note under section 1395u of this title.]''

STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Pub. L. 99–509, title IX, §9313(c)(3), Oct. 21, 1986, 100 Stat. 2003, directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

§ 1320a–7b. Criminal penalties for acts involving Federal health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a Federal health care program (as defined in subsection (f) of this section),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a Federal health care pro-

gram and knows that the individual who furnished the service was not licensed as a physician, or

(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, conversion, or provision of counsel or assistance by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a Federal health care program is convicted of an offense under the preceding provisions of this subsection, the administrator of such program may at its option (notwithstanding any other provision of such program) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under a Federal health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under a Federal health care program if—

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.];

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 or in regulations under section 1395w–104(e)(6)[1] of this title;

(F) any remuneration between an organization and an individual or entity providing items or services, or a combination thereof, pursuant to a written agreement between the organization and the individual or entity if the organization is an eligible organization under section 1395mm of this title or if the written agreement, through a risk-sharing arrangement, places the individual or entity at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide;

[1] See References in Text note below.

(G) the waiver or reduction by pharmacies (including pharmacies of the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations) of any cost-sharing imposed under part D of subchapter XVIII of this chapter, if the conditions described in clauses (i) through (iii) of section 1320a–7a(i)(6)(A) of this title are met with respect to the waiver or reduction (except that, in the case of such a waiver or reduction on behalf of a subsidy eligible individual (as defined in section 1395w–114(a)(3) of this title), section 1320a–7a(i)(6)(A) of this title shall be applied without regard to clauses (ii) and (iii) of that section);

(H) any remuneration between a federally qualified health center (or an entity controlled by such a health center) and an MA organization pursuant to a written agreement described in section 1395w–23(a)(4) of this title;

(I) any remuneration between a health center entity described under clause (i) or (ii) of section 1396d(*l*)(2)(B) of this title and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity; and

(J) a discount in the price of an applicable drug (as defined in paragraph (2) of section 1395w–114a(g) of this title) of a manufacturer that is furnished to an applicable beneficiary (as defined in paragraph (1) of such section) under the Medicare coverage gap discount program under section 1395w–114a of this title.

(4) Whoever without lawful authority knowingly and willfully purchases, sells or distributes, or arranges for the purchase, sale, or distribution of a beneficiary identification number or unique health identifier for a health care provider under subchapter XVIII, subchapter XIX, or subchapter XXI shall be imprisoned for not more than 10 years or fined not more than $500,000 ($1,000,000 in the case of a corporation), or both.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, critical access hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title), or with respect to information required to be provided under section 1320a–3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State (or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract), or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(f) "Federal health care program" defined

For purposes of this section, the term ''Federal health care program'' means—

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5); or

(2) any State health care program, as defined in section 1320a–7(h) of this title.

(g) Liability under subchapter III of chapter 37 of title 31

In addition to the penalties provided for in this section or section 1320a–7a of this title, a claim that includes items or services resulting

from a violation of this section constitutes a false or fraudulent claim for purposes of subchapter III of chapter 37 of title 31.

(h) Actual knowledge or specific intent not required

With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1128B, formerly title XVIII, § 1877(d), and title XIX, § 1909, as added and amended Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), Oct. 30, 1972, 86 Stat. 1419, 1454; Pub. L. 95–142, § 4(a), (b), Oct. 25, 1977, 91 Stat. 1179, 1181; Pub. L. 96–499, title IX, § 917, Dec. 5, 1980, 94 Stat. 2625; Pub. L. 98–369, div. B, title III, § 2306(f)(2), July 18, 1984, 98 Stat. 1073; renumbered title XI, § 1128B, and amended Pub. L. 100–93, §§ 4(a)–(d), 14(b), Aug. 18, 1987, 101 Stat. 688, 689, 697; Pub. L. 100–203, title IV, §§ 4039(a), 4211(h)(7), Dec. 22, 1987, 101 Stat. 1330–81, 1330–206; Pub. L. 100–360, title IV, § 411(a)(3)(A), (B)(i), July 1, 1988, 102 Stat. 768; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(ii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 101–508, title IV, §§ 4161(a)(4), 4164(b)(2), Nov. 5, 1990, 104 Stat. 1388–94, 1388–102; Pub. L. 103–432, title I, § 133(a)(2), Oct. 31, 1994, 108 Stat. 4421; Pub. L. 104–191, title II, §§ 204(a), 216(a), 217, Aug. 21, 1996, 110 Stat. 1999, 2007, 2008; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4704(b), 4734, Aug. 5, 1997, 111 Stat. 373, 498, 522; Pub. L. 108–173, title I, § 101(e)(2), (8)(A), title II, § 237(d), title IV, § 431(a), Dec. 8, 2003, 117 Stat. 2150, 2152, 2213, 2287; Pub. L. 111–148, title III, § 3301(d)(1), title VI, § 6402(f), Mar. 23, 2010, 124 Stat. 468, 759; Pub. L. 114–115, § 8, Dec. 28, 2015, 129 Stat. 3134.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b)(3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub. L. 100–93, which is set out below.

Section 1395w–104(e)(6) of this title, referred to in subsec. (b)(3)(E), was in the original ''section 1860D–3(e)(6)'', and was translated as reading ''section 1860D–4(e)(6)'' to reflect the probable intent of Congress, because section 1860D–3, which is classified to section 1395w–103 of this title, does not contain a subsec. (e), and section 1395w–104(e)(6) relates to regulations.

CODIFICATION

Prior to redesignation by Pub. L. 100–93, subsecs. (a) to (d) of this section were subsecs. (a) to (d) of section 1909 of act Aug. 14, 1935, which was classified to section 1396h of this title, and subsec. (e) of this section was subsec. (d) of section 1877 of act Aug. 14, 1935, which was classified to section 1395nn of this title.

AMENDMENTS

2015—Subsec. (b)(4). Pub. L. 114–115 added par. (4).

2010—Subsec. (b)(3)(G). Pub. L. 111–148, § 3301(d)(1)(A), struck out ''and'' at the end.

Subsec. (b)(3)(H). Pub. L. 111–148, § 3301(d)(1)(B), amended subpar. (H) relating to remuneration between a federally qualified health center and an MA organization by substituting a semicolon for the period at the end and realigning margins.

Subsec. (b)(3)(I). Pub. L. 111–148, § 3301(d)(1)(C)(i), (ii), redesignated subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity as (I) and realigned margins.

Subsec. (b)(3)(J). Pub. L. 111–148, § 3301(d)(1)(C)(iii), (D), added subpar. (J).

Subsecs. (g), (h). Pub. L. 111–148, § 6402(f), added subsecs. (g) and (h).

2003—Subsec. (b)(3)(E). Pub. L. 108–173, § 101(e)(8)(A), which directed the amendment of subpar. (C) by inserting ''or in regulations under section 1395w–104(e)(6) of this title'' after ''1987'', was executed by making the insertion in subpar. (E) to reflect the probable intent of Congress because ''1987'' does not appear in subpar. (C).

Subsec. (b)(3)(G). Pub. L. 108–173, § 101(e)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 108–173, § 431(a), added subpar. (H) relating to remuneration between a health center entity and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity.

Pub. L. 108–173, § 237(d), added subpar. (H) relating to remuneration between a federally qualified health center and an MA organization.

1997—Subsec. (a). Pub. L. 105–33, § 4734(2), in cl. (ii) of concluding provisions, substituted ''failure, conversion, or provision of counsel or assistance by any other person'' for ''failure, or conversion by any other person''.

Subsec. (a)(6). Pub. L. 105–33, § 4734(1), added par. (6) and struck out former par. (6) which read as follows: ''knowingly and willfully disposes of assets (including by any transfer in trust) in order for an individual to become eligible for medical assistance under a State plan under subchapter XIX of this chapter, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1396p(c) of this title,''.

Subsec. (c). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care''.

Subsec. (d)(1). Pub. L. 105–33, § 4704(b), inserted ''(or, in the case of services provided to an individual enrolled with a medicaid managed care organization under subchapter XIX of this chapter under a contract under section 1396b(m) of this title or under a contractual, referral, or other arrangement under such contract, at a rate in excess of the rate permitted under such contract)'' after ''by the State''.

1996—Pub. L. 104–191, § 204(a)(1), substituted ''Federal'' for ''Medicare or State'' in section catchline.

Subsec. (a). Pub. L. 104–191, § 204(a)(4), in concluding provisions, substituted ''a Federal health care program'' for ''a State plan approved under subchapter XIX of this chapter'' and ''the administrator of such program may at its option (notwithstanding any other provision of such program)'' for ''the State may at its option (notwithstanding any other provision of that subchapter or of such plan)''.

Subsec. (a)(1). Pub. L. 104–191, § 204(a)(2), substituted ''a Federal health care program (as defined in subsection (f) of this section)'' for ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)''.

Subsec. (a)(5). Pub. L. 104–191, § 204(a)(3), substituted ''a Federal'' for ''a program under subchapter XVIII of this chapter or a State''.

Subsec. (a)(6). Pub. L. 104–191, § 217, added par. (6).

Subsec. (b). Pub. L. 104–191, § 204(a)(5), substituted ''a Federal health care program'' for ''subchapter XVIII of this chapter or a State health care program'' wherever appearing.

Subsec. (b)(3)(F). Pub. L. 104–191, § 216(a), added subpar. (F).

Subsec. (c). Pub. L. 104–191, § 204(a)(6), inserted ''(as defined in section 1320a–7(h) of this title)'' after ''a State health care program''.

Subsec. (f). Pub. L. 104–191, § 204(a)(7), added subsec. (f).

1994—Subsec. (b)(3)(B). Pub. L. 103–432, which directed substitution of ''1395m(j)(5)'' for ''1395m(j)(4)'' in subpar.

(B) as amended by section 134(a) of Pub. L. 103–432, could not be executed because ''1395m(j)(4)'' does not appear in subpar. (B) and section 134(a) of Pub. L. 103–432 did not amend this section.

1990—Subsec. (b)(3)(D), (E). Pub. L. 101–508, § 4161(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub. L. 101–508, § 4164(b)(2), substituted ''health care program, or with respect to information required to be provided under section 1320a–3a of this title,'' for ''health care program''.

1989—Subsec. (c). Pub. L. 101–239 inserted ''rural primary care hospital,'' after ''hospital,''.

1988—Subsec. (c). Pub. L. 100–360 made technical correction to directory language of Pub. L. 100–203, § 4039(a), see 1987 Amendment note below.

Pub. L. 100–203, § 4211(h)(7)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''intermediate care facility''.

Subsec. (d)(2)(A). Pub. L. 100–203, § 4211(h)(7)(B), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

1987—Pub. L. 100–93, § 4(a)(1), substituted ''Criminal penalties for acts involving Medicare or State health care programs'' for ''Offenses and penalties'' in section catchline.

Subsec. (a). Pub. L. 100–93, § 4(a)(3), (4), in concluding provisions, substituted ''made under the program'' for ''made under this subchapter'', ''approved under subchapter XIX of this chapter'' for ''approved under this subchapter'', and ''provision of that subchapter'' for ''provision of this subchapter''.

Subsec. (a)(1). Pub. L. 100–93, § 4(a)(2), substituted ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)'' for ''a State plan approved under this subchapter''.

Subsec. (a)(5). Pub. L. 100–93, § 4(b), added par. (5).

Subsec. (b)(1)(A), (B), (2)(A), (B). Pub. L. 100–93, § 4(a)(5), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter''.

Subsec. (b)(3). Pub. L. 100–93, §§ 4(a)(5), (6), 14(b), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter'' in two places in subpar. (A) and added subpars. (C) and (D).

Subsec. (c). Pub. L. 100–203, § 4039(a), as amended by Pub. L. 100–360, substituted ''institution, facility, or entity'' for ''institution or facility'' wherever appearing and inserted ''(including an eligible organization under section 1395mm(b) of this title)'' after ''other entity''.

Pub. L. 100–93, § 4(a)(7), substituted ''home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program'' for ''or home health agency (as those terms are employed in this subchapter)''.

Subsec. (d)(1), (2). Pub. L. 100–93, § 4(a)(8), substituted ''subchapter XIX of this chapter'' for ''this subchapter''.

Subsec. (e). Pub. L. 100–93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984—Subsec. (e). Pub. L. 98–369 inserted ''or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title'' after ''section 1395u(b)(3)(B)(ii) of this title'', and substituted ''or agreement'' for ''specified in subclause (I) of such section''.

1980—Subsec. (b)(1), (2). Pub. L. 96–499 inserted ''knowingly and willfully'' after ''Whoever''.

1977—Subsec. (a). Pub. L. 95–142, § 4(b), designated existing provisions following par. (4) as cl. (ii) and, as so designated, inserted provisions relating to activities of other persons, and inserted provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (i). See Codification note above.

Subsec. (b). Pub. L. 95–142, § 4(b), redesignated existing provisions as par. (1), substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codification note above.

Subsec. (c). Pub. L. 95–142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both. See Codification note above.

Subsec. (d). Pub. L. 95–142, § 4(b), added subsec. (d). See Codification note above.

Subsec. (e). Pub. L. 95–142, § 4(a), added subsec. (e). See Codification note above.

1972—Subsec. (c). Pub. L. 92–603, § 278(b)(9), substituted ''skilled nursing facility'' for ''skilled nursing home''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title III, § 3301(d)(3), Mar. 23, 2010, 124 Stat. 468, provided that: ''The amendments made by this subsection [amending this section and 1396r–8 of this title] shall apply to drugs dispensed on or after July 1, 2010.''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title II, § 237(e), Dec. 8, 2003, 117 Stat. 2213, provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395w–21, 1395w–23, and 1395w–27 of this title] shall apply to services provided on or after January 1, 2006, and contract years beginning on or after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of 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.

Amendment by section 4704(b) of Pub. L. 105–33 effective Aug. 5, 1997, and applicable to contracts entered into or renewed on or after Oct. 1, 1997, see section 4710 of Pub. L. 105–33, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–191, title II, § 204(b), Aug. 21, 1996, 110 Stat. 2000, provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1997.''

Pub. L. 104–191, title II, § 216(c), Aug. 21, 1996, 110 Stat. 2008, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to written agreements entered into on or after January 1, 1997, without regard to whether regulations have been issued to implement such amendments.''

Amendment by section 217 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 133(a)(2) of Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(4) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991,

see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4164(b)(2) of Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4211(h)(7) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–142, § 4(d), Oct. 25, 1977, 91 Stat. 1183, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE

Pub. L. 92–603, title II, § 242(d), Oct. 30, 1972, 86 Stat. 1420, provided that: ''The provisions of amendments made by this section [enacting this section and section 1396h of this title and amending section 1395ii of this title] shall not be applicable to any acts, statements, or representations made or committed prior to the enactment of this Act [Oct. 30, 1972].''

RULEMAKING FOR EXCEPTION FOR HEALTH CENTER ENTITY ARRANGEMENTS

Pub. L. 108–173, title IV, § 431(b), Dec. 8, 2003, 117 Stat. 2287, provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary [of Health and Human Services] shall establish, on an expedited basis, standards relating to the exception described in section 1128B(b)(3)(H) [now section 1128B(b)(3)(I)] of the Social Security Act [42 U.S.C. 1320a–7b(b)(3)(I)], as added by subsection (a), for health center entity arrangements to the antikickback penalties.

''(B) FACTORS TO CONSIDER.—The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

''(i) Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

''(ii) Whether the arrangement between the health center entity and the other party restricts or limits an individual's freedom of choice.

''(iii) Whether the arrangement between the health center entity and the other party protects a health care professional's independent medical judgment regarding medically appropriate treatment.

The Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.

''(2) DEADLINE.—Not later than 1 year after the date of the enactment of this Act [Dec. 8, 2003] the Secretary shall publish final regulations establishing the standards described in paragraph (1).''

NEGOTIATED RULEMAKING FOR RISK-SHARING EXCEPTION

Pub. L. 104–191, title II, § 216(b), Aug. 21, 1996, 110 Stat. 2007, provided that:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter 3 [III] of chapter 5 of title 5, United States Code, standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties described in section 1128B(b)(3)(F) of the Social Security Act [42 U.S.C. 1320a–7b(b)(3)(F)], as added by subsection (a).

''(B) FACTORS TO CONSIDER.—In establishing standards relating to the exception for risk-sharing arrangements to the anti-kickback penalties under subparagraph (A), the Secretary—

''(i) shall consult with the Attorney General and representatives of the hospital, physician, other health practitioner, and health plan communities, and other interested parties; and

''(ii) shall take into account—

''(I) the level of risk appropriate to the size and type of arrangement;

''(II) the frequency of assessment and distribution of incentives;

''(III) the level of capital contribution; and

''(IV) the extent to which the risk-sharing arrangement provides incentives to control the cost and quality of health care services.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be January 1, 1997.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subsection, '15 days' shall be substituted for '30 days'.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

''(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

''(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

''(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than October 1, 1996, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before one month before the target date for publication of the rule. If the committee reports

that the committee has failed to make significant progress toward such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

''(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than one month before the target publication date.

''(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target publication date. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

''(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target publication date.''

ANTI-KICKBACK REGULATIONS

Pub. L. 100–93, §14(a), Aug. 18, 1987, 101 Stat. 697, provided that: ''The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18, 1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act [42 U.S.C. 1320a–7b(b)] and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).''

§ 1320a–7c. Fraud and abuse control program

(a) Establishment of program

(1) In general

Not later than January 1, 1997, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to health plans,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1320a–7, 1320a–7a, and 1320a–7b of this title and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue advisory opinions and special fraud alerts pursuant to section 1320a–7d of this title.

(2) Coordination with health plans

In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) Guidelines

(A) In general

The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5 shall not apply in the issuance of such guidelines.

(B) Information guidelines

(i) In general

Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) Confidentiality

Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) Qualified immunity for providing information

The provisions of section 1320c–6(a) of this title (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(4) Ensuring access to documentation

The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

(5) Authority of Inspector General

Nothing in this chapter shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Additional use of funds by Inspector General

(1) Reimbursements for investigations

The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payor, or otherwise.

(2) Crediting

Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

(c) "Health plan" defined

For purposes of this section, the term ''health plan'' means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

(1) a policy of health insurance;

(2) a contract of a service benefit organization; and

(3) a membership agreement with a health maintenance organization or other prepaid health plan.

(Aug. 14, 1935, ch. 531, title XI, § 1128C, as added Pub. L. 104–191, title II, § 201(a), Aug. 21, 1996, 110 Stat. 1992; amended Pub. L. 111–148, title VI, § 6403(c), Mar. 23, 2010, 124 Stat. 766.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(4), (5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2010—Subsec. (a)(1)(C) to (E). Pub. L. 111–148 inserted ''and'' at end of subpar. (C), substituted period for '', and'' at end of subpar. (D), and struck out subpar. (E) which read as follows: ''to provide for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, or practitioners pursuant to the data collection system established under section 1320a–7e of this title.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–148 effective on the first day after the final day of the transition period defined in section 6403(d)(5) of Pub. L. 111–148, see section 6403(d)(6) of Pub. L. 111–148, set out as a Transition Process; Regulations; Effective Date of 2010 Amendment note under section 1320a–7e of this title.

§ 1320a–7d. Guidance regarding application of health care fraud and abuse sanctions

(a) Solicitation and publication of modifications to existing safe harbors and new safe harbors

(1) In general

(A) Solicitation of proposals for safe harbors

Not later than January 1, 1997, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1320a–7b(b) of this title and shall not serve as the basis for an exclusion under section 1320a–7(b)(7) of this title;

(iii) advisory opinions to be issued pursuant to subsection (b) of this section; and

(iv) special fraud alerts to be issued pursuant to subsection (c) of this section.

(B) Publication of proposed modifications and proposed additional safe harbors

After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) Report

The Inspector General of the Department of Health and Human Services (in this section referred to as the ''Inspector General'') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) Criteria for modifying and establishing safe harbors

In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1320a–7b(f) of this title).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) Advisory opinions

(1) Issuance of advisory opinions

The Secretary, in consultation with the Attorney General, shall issue written advisory opinions as provided in this subsection.

(2) Matters subject to advisory opinions

The Secretary shall issue advisory opinions as to the following matters:

(A) What constitutes prohibited remuneration within the meaning of section 1320a–7b(b) of this title or section 1320a–7a(i)(6) of this title.

(B) Whether an arrangement or proposed arrangement satisfies the criteria set forth in section 1320a–7b(b)(3) of this title for activities which do not result in prohibited remuneration.

(C) Whether an arrangement or proposed arrangement satisfies the criteria which the Secretary has established, or shall establish by regulation for activities which do not result in prohibited remuneration.

(D) What constitutes an inducement to reduce or limit services to individuals entitled to benefits under subchapter XVIII of this chapter or subchapter XIX of this chapter within the meaning of section 1320a–7a(b) of this title.

(E) Whether any activity or proposed activity constitutes grounds for the imposition of a sanction under section 1320a–7, 1320a–7a, or 1320a–7b of this title.

(3) Matters not subject to advisory opinions

Such advisory opinions shall not address the following matters:

(A) Whether the fair market value shall be, or was paid or received for any goods, services or property.

(B) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(4) Effect of advisory opinions

(A) Binding as to Secretary and parties involved

Each advisory opinion issued by the Secretary shall be binding as to the Secretary and the party or parties requesting the opinion.

(B) Failure to seek opinion

The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections[1] 1320a–7, 1320a–7a, or 1320a–7b of this title.

(5) Regulations

(A) In general

Not later than 180 days after August 21, 1996, the Secretary shall issue regulations to carry out this section. Such regulations shall provide for—

(i) the procedure to be followed by a party applying for an advisory opinion;

(ii) the procedure to be followed by the Secretary in responding to a request for an advisory opinion;

(iii) the interval in which the Secretary shall respond;

(iv) the reasonable fee to be charged to the party requesting an advisory opinion; and

(v) the manner in which advisory opinions will be made available to the public.

(B) Specific contents

Under the regulations promulgated pursuant to subparagraph (A)—

(i) the Secretary shall be required to issue to a party requesting an advisory opinion by not later than 60 days after the request is received; and

(ii) the fee charged to the party requesting an advisory opinion shall be equal to the costs incurred by the Secretary in responding to the request.

(6) Application of subsection

This subsection shall apply to requests for advisory opinions made on or after the date which is 6 months after August 21, 1996.

(c) Special fraud alerts

(1) In general

(A) Request for special fraud alerts

Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under the Medicare program under subchapter XVIII of this chapter or a State health care program, as defined in section 1320a–7(h) of this title (in this subsection referred to as a ''special fraud alert'').

(B) Issuance and publication of special fraud alerts

Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) Criteria for special fraud alerts

In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2) of this section; and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

(Aug. 14, 1935, ch. 531, title XI, § 1128D, as added Pub. L. 104–191, title II, § 205, Aug. 21, 1996, 110 Stat. 2000; amended Pub. L. 105–33, title IV, § 4331(a)(1), Aug. 5, 1997, 111 Stat. 395; Pub. L. 105–277, div. J, title V, § 5201(c), Oct. 21, 1998, 112 Stat. 2681–917; Pub. L. 106–554, § 1(a)(6) [title V, § 543], Dec. 21, 2000, 114 Stat. 2763, 2763A–551.)

REFERENCES IN TEXT

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (a)(1)(A)(i), is section 14(a) of Pub. L. 100–93, which is set out as a note under section 1320a–7b of this title.

Section 5 of the Inspector General Act of 1978, referred to in subsec. (a)(1)(C), is section 5 of Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1103, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Internal Revenue Code of 1986, referred to in subsec. (b)(3)(B), is classified generally to Title 26, Internal Revenue Code.

[1] So in original. Probably should be ''section''.

AMENDMENTS

2000—Subsec. (b)(6). Pub. L. 106–554 struck out '', and before the date which is 4 years after August 21, 1996'' before period at end.

1998—Subsec. (b)(2)(A). Pub. L. 105–277 inserted ''or section 1320a–7a(i)(6) of this title'' before period at end.

1997—Subsec. (b)(2)(D). Pub. L. 105–33 substituted ''section 1320a–7a(b)'' for ''section 1320a–7b(b)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, see section 4331(f) of Pub. L. 105–33, set out as a note under section 1320a–7e of this title.

§ 1320a–7e. Health care fraud and abuse data collection program

(a) In general

The Secretary shall maintain a national health care fraud and abuse data collection program under this section for the reporting of certain final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (d), and shall furnish the information collected under this section to the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).

(b) Reporting of information

(1) In general

Each Government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) Information to be reported

The information to be reported under paragraph (1) includes:

(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner, who is the subject of a final adverse action, is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) Confidentiality

In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) Timing and form of reporting

The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) To whom reported

The information required to be reported under this subsection shall be reported to the Secretary.

(6) Sanctions for failure to report

(A) Health plans

Any health plan that fails to report information on an adverse action required to be reported under this subsection shall be subject to a civil money penalty of not more than $25,000 for each such adverse action not reported. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Governmental agencies

The Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this subsection.

(c) Disclosure and correction of information

(1) Disclosure

With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section with respect to a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) Corrections

Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) Access to reported information

(1) Availability

The information collected under this section shall be available from the National Practitioner Data Bank to the agencies, authorities, and officials which are provided under section 1396r–2(b) of this title information reported under section 1396r–2(a) of this title.

(2) Fees for disclosure

The Secretary may establish or approve reasonable fees for the disclosure of information under this section. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary to cover such costs.

(e) Protection from liability for reporting

No person or entity, including the agency designated by the Secretary in subsection (b)(5) of

this section shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) Appropriate coordination

In implementing this section, the Secretary shall provide for the maximum appropriate coordination with part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) and section 1396r–2 of this title.

(g) Definitions and special rules

For purposes of this section:

(1) Final adverse action

(A) In general

The term ''final adverse action'' includes:

(i) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(II) any dismissal or closure of the proceedings by reason of the provider, supplier, or practitioner surrendering their license or leaving the State or jurisdiction[1]

(III) any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or

(IV) any other negative action or finding by such Federal agency that is publicly available information.

(iv) Exclusion from participation in a Federal health care program (as defined in section 1320a–7b(f) of this title).

(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(B) Exception

The term does not include any action with respect to a malpractice claim.

(2) Practitioner

The terms ''licensed health care practitioner'', ''licensed practitioner'', and ''practitioner'' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) Government agency

The term ''Government agency'' shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Department of Veterans Affairs.

(D) Federal agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(4) Health plan

The term ''health plan'' has the meaning given such term by section 1320a–7c(c) of this title.

(5) Determination of conviction

For purposes of paragraph (1), the existence of a conviction shall be determined under paragraphs (1) through (4) of section 1320a–7(i) of this title.

(Aug. 14, 1935, ch. 531, title XI, §1128E, as added Pub. L. 104–191, title II, §221(a), Aug. 21, 1996, 110 Stat. 2009; amended Pub. L. 105–33, title IV, §4331(a)(2), (b), (d), Aug. 5, 1997, 111 Stat. 395, 396; Pub. L. 111–148, title VI, §6403(a), Mar. 23, 2010, 124 Stat. 763.)

REFERENCES IN TEXT

The Health Care Quality Improvement Act of 1986, referred to in subsecs. (a) and (f), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, which is classified generally to chapter 117 (§11101 et seq.) of this title. Part B of the Act is classified generally to subchapter II (§11131 et seq.) of chapter 117 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (b)(2)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–148, §6403(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: ''Not later than January 1, 1997, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b) of this section, with access as set forth in subsection (c) of this section, and shall maintain a database of the information collected under this section.''

Subsec. (d). Pub. L. 111–148, §6403(a)(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows:

''(1) AVAILABILITY.—The information in the database maintained under this section shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

''(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information in such database (other than with respect to requests by Federal agencies). The amount of such a fee shall be sufficient to recover the full costs of operating the database. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.''

Subsec. (f). Pub. L. 111–148, §6403(a)(3), added subsec. (f) and struck out former subsec. (f). Prior to amendment, text read as follows: ''The Secretary shall imple-

[1] So in original. Probably should be followed by a comma.

ment this section in such a manner as to avoid duplication with the reporting requirements established for the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.).''

Subsec. (g)(1)(A)(iii). Pub. L. 111–148, § 6403(a)(4)(A)(i)(I), struck out ''or State'' after ''Federal'' in introductory provisions.

Subsec. (g)(1)(A)(iii)(II). Pub. L. 111–148, § 6403(a)(4)(A)(i)(III), added subcl. (II).

Subsec. (g)(1)(A)(iii)(III). Pub. L. 111–148, § 6403(a)(4)(A)(i)(II), redesignated subcl. (II) as (III). Former subcl. (III) redesignated (IV).

Pub. L. 111–148, § 6403(a)(4)(A)(i)(I), struck out ''or State'' after ''Federal''.

Subsec. (g)(1)(A)(iii)(IV). Pub. L. 111–148, § 6403(a)(4)(A)(i)(II), redesignated subcl. (III) as (IV).

Subsec. (g)(1)(A)(iv). Pub. L. 111–148, § 6403(a)(4)(A)(ii), added cl. (iv) and struck out former cl. (iv) which read as follows: ''Exclusion from participation in Federal or State health care programs (as defined in sections 1320a–7b(f) and 1320a–7(h) of this title, respectively).''

Subsec. (g)(3)(D). Pub. L. 111–148, § 6403(a)(4)(C), which directed amendment of subpar. (D) of subsec. (g) by striking out ''or State'', was executed by striking out ''or State'' after ''Federal'' in subpar. (D) of subsec. (g)(3) to reflect the probable intent of Congress.

Pub. L. 111–148, § 6403(a)(4)(B), redesignated subpar. (F) as (D) and struck out former subpar. (D) which read as follows: ''State law enforcement agencies.''

Subsec. (g)(3)(E). Pub. L. 111–148, § 6403(a)(4)(B)(i), struck out subpar. (E) which read as follows: ''State medicaid fraud control units.''

Subsec. (g)(3)(F). Pub. L. 111–148, § 6403(a)(4)(B)(ii), redesignated subpar. (F) as (D).

1997—Subsec. (b)(6). Pub. L. 105–33, § 4331(d), added par. (6).

Subsec. (g)(3)(C). Pub. L. 105–33, § 4331(a)(2), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (g)(5). Pub. L. 105–33, § 4331(b), substituted ''paragraphs (1) through (4)'' for ''paragraph (4)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–33, title IV, § 4331(f), Aug. 5, 1997, 111 Stat. 396, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1320a–7, 1320a–7a, and 1320a–7d of this title] shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191].

''(2) FEDERAL HEALTH PROGRAM.—The amendments made by subsection (c) [amending section 1320a–7 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].

''(3) SANCTION FOR FAILURE TO REPORT.—The amendment made by subsection (d) [amending this section] shall apply to failures occurring on or after the date of the enactment of this Act.''

TRANSITION PROCESS; REGULATIONS; EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title VI, § 6403(d), Mar. 23, 2010, 124 Stat. 766, provided that:

''(1) IN GENERAL.—Effective on the date of enactment of this Act [Mar. 23, 2010], the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall implement a transition process under which, by not later than the end of the transition period described in paragraph (5), the Secretary shall cease operating the Healthcare Integrity and Protection Data Bank established under section 1128E of the Social Security Act [42 U.S.C. 1320a–7e] (as in effect before the effective date specified in paragraph (6)) and shall transfer all data collected in the Healthcare Integrity and Protection Data Bank to the National Practitioner Data Bank established pursuant to the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101 et seq.). During such transition process, the Secretary shall have in effect appropriate procedures to ensure that data collection and access to the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank are not disrupted.

''(2) REGULATIONS.—The Secretary shall promulgate regulations to carry out the amendments made by subsections (a) and (b) [amending this section and section 1396r–2 of this title].

''(3) FUNDING.—

''(A) AVAILABILITY OF FEES.—Fees collected pursuant to section 1128E(d)(2) of the Social Security Act [42 U.S.C. 1320a–7e(d)(2)] prior to the effective date specified in paragraph (6) for the disclosure of information in the Healthcare Integrity and Protection Data Bank shall be available to the Secretary, without fiscal year limitation, for payment of costs related to the transition process described in paragraph (1). Any such fees remaining after the transition period is complete shall be available to the Secretary, without fiscal year limitation, for payment of the costs of operating the National Practitioner Data Bank.

''(B) AVAILABILITY OF ADDITIONAL FUNDS.—In addition to the fees described in subparagraph (A), any funds available to the Secretary or to the Inspector General of the Department of Health and Human Services for a purpose related to combating health care fraud, waste, or abuse shall be available to the extent necessary for operating the Healthcare Integrity and Protection Data Bank during the transition period, including systems testing and other activities necessary to ensure that information formerly reported to the Healthcare Integrity and Protection Data Bank will be accessible through the National Practitioner Data Bank after the end of such transition period.

''(4) SPECIAL PROVISION FOR ACCESS TO THE NATIONAL PRACTITIONER DATA BANK BY THE DEPARTMENT OF VETERANS AFFAIRS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, during the 1-year period that begins on the effective date specified in paragraph (6), the information described in subparagraph (B) shall be available from the National Practitioner Data Bank to the Secretary of Veterans Affairs without charge.

''(B) INFORMATION DESCRIBED.—For purposes of subparagraph (A), the information described in this subparagraph is the information that would, but for the amendments made by this section [amending this section and sections 1320a–7c and 1396r–2 of this title], have been available to the Secretary of Veterans Affairs from the Healthcare Integrity and Protection Data Bank.

''(5) TRANSITION PERIOD DEFINED.—For purposes of this subsection, the term 'transition period' means the period that begins on the date of enactment of this Act [Mar. 23, 2010] and ends on the later of—

''(A) the date that is 1 year after such date of enactment; or

''(B) the effective date of the regulations promulgated under paragraph (2).

''(6) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) [amending this section and sections 1320a–7c and 1396r–2 of this title] shall take effect on the first day after the final day of the transition period.''

§ 1320a–7f. Coordination of medicare and medicaid surety bond provisions

In the case of a home health agency that is subject to a surety bond requirement under subchapter XVIII of this chapter and subchapter XIX of this chapter, the surety bond provided to satisfy the requirement under one such subchapter shall satisfy the requirement under the other such subchapter so long as the bond applies to guarantee return of overpayments under both such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1128F, as added Pub. L. 106–113, div. B, § 1000(a)(6) [title III, § 304(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–361.)

§ 1320a–7g. Funds to reduce medicaid fraud and abuse

(1) In general

For purposes of reducing fraud and abuse in the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]—

(A) there is appropriated to the Office of the Inspector General of the Department of Health and Human Services, out of any money in the Treasury not otherwise appropriated, $25,000,000, for fiscal year 2009; and

(B) there is authorized to be appropriated to such Office $25,000,000 for fiscal year 2010 and each subsequent fiscal year.

Amounts appropriated under this section shall remain available for expenditure until expended and shall be in addition to any other amounts appropriated or made available to such Office for such purposes with respect to the Medicaid program.

(2) Annual report

Not later than September 30 of 2009 and of each subsequent year, the Inspector General of the Department of Health and Human Services shall submit to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Finance and Appropriations of the Senate a report on the activities (and the results of such activities) funded under paragraph (1) to reduce waste, fraud, and abuse in the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] during the previous 12 month period, including the amount of funds appropriated under such paragraph for each such activity and an estimate of the savings to the Medicaid program resulting from each such activity.

(Pub. L. 110–252, title VII, § 7001(b), June 30, 2008, 122 Stat. 2389.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

This section, referred to in par. (1), means section 7001 of Pub. L. 110–252, which enacted this section and section 1396w of this title, amended sections 1396a and 1396b of this title, and repealed provisions set out as a note under section 1396a of this title.

CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 2008, and not as part of the Social Security Act which comprises this chapter.

§ 1320a–7h. Transparency reports and reporting of physician ownership or investment interests

(a) Transparency reports

(1) Payments or other transfers of value

(A) In general

On March 31, 2013, and on the 90th day of each calendar year beginning thereafter, any applicable manufacturer that provides a payment or other transfer of value to a covered recipient (or to an entity or individual at the request of or designated on behalf of a covered recipient), shall submit to the Secretary, in such electronic form as the Secretary shall require, the following information with respect to the preceding calendar year:

(i) The name of the covered recipient.

(ii) The business address of the covered recipient and, in the case of a covered recipient who is a physician, the specialty and National Provider Identifier of the covered recipient.

(iii) The amount of the payment or other transfer of value.

(iv) The dates on which the payment or other transfer of value was provided to the covered recipient.

(v) A description of the form of the payment or other transfer of value, indicated (as appropriate for all that apply) as—

(I) cash or a cash equivalent;

(II) in-kind items or services;

(III) stock, a stock option, or any other ownership interest, dividend, profit, or other return on investment; or

(IV) any other form of payment or other transfer of value (as defined by the Secretary).

(vi) A description of the nature of the payment or other transfer of value, indicated (as appropriate for all that apply) as—

(I) consulting fees;

(II) compensation for services other than consulting;

(III) honoraria;

(IV) gift;

(V) entertainment;

(VI) food;

(VII) travel (including the specified destinations);

(VIII) education;

(IX) research;

(X) charitable contribution;

(XI) royalty or license;

(XII) current or prospective ownership or investment interest;

(XIII) direct compensation for serving as faculty or as a speaker for a medical education program;

(XIV) grant; or

(XV) any other nature of the payment or other transfer of value (as defined by the Secretary).

(vii) If the payment or other transfer of value is related to marketing, education, or research specific to a covered drug, device, biological, or medical supply, the name of that covered drug, device, biological, or medical supply.

(viii) Any other categories of information regarding the payment or other transfer of value the Secretary determines appropriate.

(B) Special rule for certain payments or other transfers of value

In the case where an applicable manufacturer provides a payment or other transfer

of value to an entity or individual at the request of or designated on behalf of a covered recipient, the applicable manufacturer shall disclose that payment or other transfer of value under the name of the covered recipient.

(2) Physician ownership

In addition to the requirement under paragraph (1)(A), on March 31, 2013, and on the 90th day of each calendar year beginning thereafter, any applicable manufacturer or applicable group purchasing organization shall submit to the Secretary, in such electronic form as the Secretary shall require, the following information regarding any ownership or investment interest (other than an ownership or investment interest in a publicly traded security and mutual fund, as described in section 1395nn(c) of this title) held by a physician (or an immediate family member of such physician (as defined for purposes of section 1395nn(a) of this title)) in the applicable manufacturer or applicable group purchasing organization during the preceding year:

(A) The dollar amount invested by each physician holding such an ownership or investment interest.

(B) The value and terms of each such ownership or investment interest.

(C) Any payment or other transfer of value provided to a physician holding such an ownership or investment interest (or to an entity or individual at the request of or designated on behalf of a physician holding such an ownership or investment interest), including the information described in clauses (i) through (viii) of paragraph (1)(A), except that in applying such clauses, ''physician'' shall be substituted for ''covered recipient'' each place it appears.

(D) Any other information regarding the ownership or investment interest the Secretary determines appropriate.

(b) Penalties for noncompliance

(1) Failure to report

(A) In general

Subject to subparagraph (B) except as provided in paragraph (2), any applicable manufacturer or applicable group purchasing organization that fails to submit information required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than $1,000, but not more than $10,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Limitation

The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed $150,000.

(2) Knowing failure to report

(A) In general

Subject to subparagraph (B), any applicable manufacturer or applicable group purchasing organization that knowingly fails to submit information required under subsection (a) in a timely manner in accordance with rules or regulations promulgated to carry out such subsection, shall be subject to a civil money penalty of not less than $10,000, but not more than $100,000, for each payment or other transfer of value or ownership or investment interest not reported as required under such subsection. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(B) Limitation

The total amount of civil money penalties imposed under subparagraph (A) with respect to each annual submission of information under subsection (a) by an applicable manufacturer or applicable group purchasing organization shall not exceed $1,000,000.

(3) Use of funds

Funds collected by the Secretary as a result of the imposition of a civil money penalty under this subsection shall be used to carry out this section.

(c) Procedures for submission of information and public availability

(1) In general

(A) Establishment

Not later than October 1, 2011, the Secretary shall establish procedures—

(i) for applicable manufacturers and applicable group purchasing organizations to submit information to the Secretary under subsection (a); and

(ii) for the Secretary to make such information submitted available to the public.

(B) Definition of terms

The procedures established under subparagraph (A) shall provide for the definition of terms (other than those terms defined in subsection (e)), as appropriate, for purposes of this section.

(C) Public availability

Except as provided in subparagraph (E), the procedures established under subparagraph (A)(ii) shall ensure that, not later than September 30, 2013, and on June 30 of each calendar year beginning thereafter, the information submitted under subsection (a) with respect to the preceding calendar year is made available through an Internet website that—

(i) is searchable and is in a format that is clear and understandable;

(ii) contains information that is presented by the name of the applicable manufacturer or applicable group purchasing

organization, the name of the covered recipient, the business address of the covered recipient, the specialty of the covered recipient, the value of the payment or other transfer of value, the date on which the payment or other transfer of value was provided to the covered recipient, the form of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(v), the nature of the payment or other transfer of value, indicated (as appropriate) under subsection (a)(1)(A)(vi), and the name of the covered drug, device, biological, or medical supply, as applicable;

(iii) contains information that is able to be easily aggregated and downloaded;

(iv) contains a description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year;

(v) contains background information on industry-physician relationships;

(vi) in the case of information submitted with respect to a payment or other transfer of value described in subparagraph (E)(i), lists such information separately from the other information submitted under subsection (a) and designates such separately listed information as funding for clinical research;

(vii) contains any other information the Secretary determines would be helpful to the average consumer;

(viii) does not contain the National Provider Identifier of the covered recipient, and

(ix) subject to subparagraph (D), provides the applicable manufacturer, applicable group purchasing organization, or covered recipient an opportunity to review and submit corrections to the information submitted with respect to the applicable manufacturer, applicable group purchasing organization, or covered recipient, respectively, for a period of not less than 45 days prior to such information being made available to the public.

(D) Clarification of time period for review and corrections

In no case may the 45-day period for review and submission of corrections to information under subparagraph (C)(ix) prevent such information from being made available to the public in accordance with the dates described in the matter preceding clause (i) in subparagraph (C).

(E) Delayed publication for payments made pursuant to product research or development agreements and clinical investigations

(i) In general

In the case of information submitted under subsection (a) with respect to a payment or other transfer of value made to a covered recipient by an applicable manufacturer pursuant to a product research or development agreement for services furnished in connection with research on a potential new medical technology or a new application of an existing medical technology or the development of a new drug, device, biological, or medical supply, or by an applicable manufacturer in connection with a clinical investigation regarding a new drug, device, biological, or medical supply, the procedures established under subparagraph (A)(ii) shall provide that such information is made available to the public on the first date described in the matter preceding clause (i) in subparagraph (C) after the earlier of the following:

(I) The date of the approval or clearance of the covered drug, device, biological, or medical supply by the Food and Drug Administration.

(II) Four calendar years after the date such payment or other transfer of value was made.

(ii) Confidentiality of information prior to publication

Information described in clause (i) shall be considered confidential and shall not be subject to disclosure under section 552 of title 5 or any other similar Federal, State, or local law, until on or after the date on which the information is made available to the public under such clause.

(2) Consultation

In establishing the procedures under paragraph (1), the Secretary shall consult with the Inspector General of the Department of Health and Human Services, affected industry, consumers, consumer advocates, and other interested parties in order to ensure that the information made available to the public under such paragraph is presented in the appropriate overall context.

(d) Annual reports and relation to State laws

(1) Annual report to Congress

Not later than April 1 of each year beginning with 2013, the Secretary shall submit to Congress a report that includes the following:

(A) The information submitted under subsection (a) during the preceding year, aggregated for each applicable manufacturer and applicable group purchasing organization that submitted such information during such year (except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to Congress after the date on which such information is made available to the public under such subsection).

(B) A description of any enforcement actions taken to carry out this section, including any penalties imposed under subsection (b), during the preceding year.

(2) Annual reports to States

Not later than September 30, 2013 and on June 30 of each calendar year thereafter, the Secretary shall submit to States a report that includes a summary of the information submitted under subsection (a) during the preced-

ing year with respect to covered recipients in the State (except, in the case of information submitted with respect to a payment or other transfer of value described in subsection (c)(1)(E)(i), such information shall be included in the first report submitted to States after the date on which such information is made available to the public under such subsection).

(3) Relation to State laws

(A) IN GENERAL.—In the case of a payment or other transfer of value provided by an applicable manufacturer that is received by a covered recipient (as defined in subsection (e)) on or after January 1, 2012, subject to subparagraph (B), the provisions of this section shall preempt any statute or regulation of a State or of a political subdivision of a State that requires an applicable manufacturer (as so defined) to disclose or report, in any format, the type of information (as described in subsection (a)) regarding such payment or other transfer of value.

(B) NO PREEMPTION OF ADDITIONAL REQUIREMENTS.—Subparagraph (A) shall not preempt any statute or regulation of a State or of a political subdivision of a State that requires the disclosure or reporting of information—

(i) not of the type required to be disclosed or reported under this section;

(ii) described in subsection (e)(10)(B), except in the case of information described in clause (i) of such subsection;

(iii) by any person or entity other than an applicable manufacturer (as so defined) or a covered recipient (as defined in subsection (e)); or

(iv) to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes.

(C) Nothing in subparagraph (A) shall be construed to limit the discovery or admissibility of information described in such subparagraph in a criminal, civil, or administrative proceeding.

(4) Consultation

The Secretary shall consult with the Inspector General of the Department of Health and Human Services on the implementation of this section.

(e) Definitions

In this section:

(1) Applicable group purchasing organization

The term ''applicable group purchasing organization'' means a group purchasing organization (as defined by the Secretary) that purchases, arranges for, or negotiates the purchase of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

(2) Applicable manufacturer

The term ''applicable manufacturer'' means a manufacturer of a covered drug, device, biological, or medical supply which is operating in the United States, or in a territory, possession, or commonwealth of the United States.

(3) Clinical investigation

The term ''clinical investigation'' means any experiment involving 1 or more human subjects, or materials derived from human subjects, in which a drug or device is administered, dispensed, or used.

(4) Covered device

The term ''covered device'' means any device for which payment is available under subchapter XVIII or a State plan under subchapter XIX or XXI (or a waiver of such a plan).

(5) Covered drug, device, biological, or medical supply

The term ''covered drug, device, biological, or medical supply'' means any drug, biological product, device, or medical supply for which payment is available under subchapter XVIII or a State plan under subchapter XIX or XXI (or a waiver of such a plan).

(6) Covered recipient

(A) In general

Except as provided in subparagraph (B), the term ''covered recipient'' means the following:

(i) A physician.

(ii) A teaching hospital.

(B) Exclusion

Such term does not include a physician who is an employee of the applicable manufacturer that is required to submit information under subsection (a).

(7) Employee

The term ''employee'' has the meaning given such term in section 1395nn(h)(2) of this title.

(8) Knowingly

The term ''knowingly'' has the meaning given such term in section 3729(b) of title 31.

(9) Manufacturer of a covered drug, device, biological, or medical supply

The term ''manufacturer of a covered drug, device, biological, or medical supply'' means any entity which is engaged in the production, preparation, propagation, compounding, or conversion of a covered drug, device, biological, or medical supply (or any entity under common ownership with such entity which provides assistance or support to such entity with respect to the production, preparation, propagation, compounding, conversion, marketing, promotion, sale, or distribution of a covered drug, device, biological, or medical supply).

(10) Payment or other transfer of value

(A) In general

The term ''payment or other transfer of value'' means a transfer of anything of value. Such term does not include a transfer of anything of value that is made indirectly to a covered recipient through a third party in connection with an activity or service in the case where the applicable manufacturer is unaware of the identity of the covered recipient.

(B) Exclusions

An applicable manufacturer shall not be required to submit information under subsection (a) with respect to the following:

(i) A transfer of anything the value of which is less than $10, unless the aggregate amount transferred to, requested by, or designated on behalf of the covered recipient by the applicable manufacturer during the calendar year exceeds $100. For calendar years after 2012, the dollar amounts specified in the preceding sentence shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) for the 12-month period ending with June of the previous year.

(ii) Product samples that are not intended to be sold and are intended for patient use.

(iii) Educational materials that directly benefit patients or are intended for patient use.

(iv) The loan of a covered device for a short-term trial period, not to exceed 90 days, to permit evaluation of the covered device by the covered recipient.

(v) Items or services provided under a contractual warranty, including the replacement of a covered device, where the terms of the warranty are set forth in the purchase or lease agreement for the covered device.

(vi) A transfer of anything of value to a covered recipient when the covered recipient is a patient and not acting in the professional capacity of a covered recipient.

(vii) Discounts (including rebates).

(viii) In-kind items used for the provision of charity care.

(ix) A dividend or other profit distribution from, or ownership or investment interest in, a publicly traded security and mutual fund (as described in section 1395nn(c) of this title).

(x) In the case of an applicable manufacturer who offers a self-insured plan, payments for the provision of health care to employees under the plan.

(xi) In the case of a covered recipient who is a licensed non-medical professional, a transfer of anything of value to the covered recipient if the transfer is payment solely for the non-medical professional services of such licensed non-medical professional.

(xii) In the case of a covered recipient who is a physician, a transfer of anything of value to the covered recipient if the transfer is payment solely for the services of the covered recipient with respect to a civil or criminal action or an administrative proceeding.

(11) Physician

The term ''physician'' has the meaning given that term in section 1395x(r) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128G, as added Pub. L. 111–148, title VI, § 6002, Mar. 23, 2010, 124 Stat. 689.)

§ 1320a–7i. Reporting of information relating to drug samples

(a) In general

Not later than April 1 of each year (beginning with 2012), each manufacturer and authorized distributor of record of an applicable drug shall submit to the Secretary (in a form and manner specified by the Secretary) the following information with respect to the preceding year:

(1) In the case of a manufacturer or authorized distributor of record which makes distributions by mail or common carrier under subsection (d)(2) of section 353 of title 21, the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

(B) any other category of information determined appropriate by the Secretary.

(2) In the case of a manufacturer or authorized distributor of record which makes distributions by means other than mail or common carrier under subsection (d)(3) of such section 353 of title 21, the identity and quantity of drug samples requested and the identity and quantity of drug samples distributed under such subsection during that year, aggregated by—

(A) the name, address, professional designation, and signature of the practitioner making the request under subparagraph (A)(i) of such subsection, or of any individual who makes or signs for the request on behalf of the practitioner; and

(B) any other category of information determined appropriate by the Secretary.

(b) Definitions

In this section:

(1) Applicable drug

The term ''applicable drug'' means a drug—

(A) which is subject to subsection (b) of such section 353 of title 21; and

(B) for which payment is available under subchapter XVIII or a State plan under subchapter XIX or XXI (or a waiver of such a plan).

(2) Authorized distributor of record

The term ''authorized distributor of record'' has the meaning given that term in subsection (e)(3)(A) of such section.

(3) Manufacturer

The term ''manufacturer'' has the meaning given that term for purposes of subsection (d) of such section.

(Aug. 14, 1935, ch. 531, title XI, § 1128H, as added Pub. L. 111–148, title VI, § 6004, Mar. 23, 2010, 124 Stat. 697.)

§ 1320a–7j. Accountability requirements for facilities

(a) Definition of facility

In this section, the term ''facility'' means—

(1) a skilled nursing facility (as defined in section 1395i–3(a) of this title); or

(2) a nursing facility (as defined in section 1396r(a) of this title).

(b) Effective compliance and ethics programs

(1) Requirement

On or after the date that is 36 months after March 23, 2010, a facility shall, with respect to the entity that operates the facility (in this subparagraph[1] referred to as the ''operating organization'' or ''organization''), have in operation a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations under this chapter and in promoting quality of care consistent with regulations developed under paragraph (2).

(2) Development of regulations

(A) In general

Not later than the date that is 2 years after March 23, 2010, the Secretary, working jointly with the Inspector General of the Department of Health and Human Services, shall promulgate regulations for an effective compliance and ethics program for operating organizations, which may include a model compliance program.

(B) Design of regulations

Such regulations with respect to specific elements or formality of a program shall, in the case of an organization that operates 5 or more facilities, vary with the size of the organization, such that larger organizations should have a more formal program and include established written policies defining the standards and procedures to be followed by its employees. Such requirements may specifically apply to the corporate level management of multi unit nursing home chains.

(C) Evaluation

Not later than 3 years after the date of the promulgation of regulations under this paragraph, the Secretary shall complete an evaluation of the compliance and ethics programs required to be established under this subsection. Such evaluation shall determine if such programs led to changes in deficiency citations, changes in quality performance, or changes in other metrics of patient quality of care. The Secretary shall submit to Congress a report on such evaluation and shall include in such report such recommendations regarding changes in the requirements for such programs as the Secretary determines appropriate.

(3) Requirements for compliance and ethics programs

In this subsection, the term ''compliance and ethics program'' means, with respect to a facility, a program of the operating organization that—

(A) has been reasonably designed, implemented, and enforced so that it generally will be effective in preventing and detecting criminal, civil, and administrative violations under this chapter and in promoting quality of care; and

(B) includes at least the required components specified in paragraph (4).

(4) Required components of program

The required components of a compliance and ethics program of an operating organization are the following:

(A) The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations under this chapter.

(B) Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to assure such compliance.

(C) The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations under this chapter.

(D) The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(E) The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations under this chapter by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution.

(F) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense.

(G) After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modification to its program to prevent and detect criminal, civil, and administrative violations under this chapter.

(H) The organization must periodically undertake reassessment of its compliance program to identify changes necessary to reflect changes within the organization and its facilities.

(c) Quality assurance and performance improvement program

(1) In general

Not later than December 31, 2011, the Secretary shall establish and implement a quality

[1] So in original. Probably should be ''subsection''.

assurance and performance improvement program (in this subparagraph referred to as the ''QAPI program'') for facilities, including multi unit chains of facilities. Under the QAPI program, the Secretary shall establish standards relating to quality assurance and performance improvement with respect to facilities and provide technical assistance to facilities on the development of best practices in order to meet such standards. Not later than 1 year after the date on which the regulations are promulgated under paragraph (2), a facility must submit to the Secretary a plan for the facility to meet such standards and implement such best practices, including how to coordinate the implementation of such plan with quality assessment and assurance activities conducted under sections 1395i–3(b)(1)(B) and 1396r(b)(1)(B) of this title, as applicable.

(2) Regulations

The Secretary shall promulgate regulations to carry out this subsection.

(f)[2] Standardized complaint form

(1) Development by the Secretary

The Secretary shall develop a standardized complaint form for use by a resident (or a person acting on the resident's behalf) in filing a complaint with a State survey and certification agency and a State long-term care ombudsman program with respect to a facility.

(2) Complaint forms and resolution processes

(A) Complaint forms

The State must make the standardized complaint form developed under paragraph (1) available upon request to—

(i) a resident of a facility; and

(ii) any person acting on the resident's behalf.

(B) Complaint resolution process

The State must establish a complaint resolution process in order to ensure that the legal representative of a resident of a facility or other responsible party is not denied access to such resident or otherwise retaliated against if they have complained about the quality of care provided by the facility or other issues relating to the facility. Such complaint resolution process shall include—

(i) procedures to assure accurate tracking of complaints received, including notification to the complainant that a complaint has been received;

(ii) procedures to determine the likely severity of a complaint and for the investigation of the complaint; and

(iii) deadlines for responding to a complaint and for notifying the complainant of the outcome of the investigation.

(3) Rule of construction

Nothing in this subsection shall be construed as preventing a resident of a facility (or a person acting on the resident's behalf) from submitting a complaint in a manner or format other than by using the standardized complaint form developed under paragraph (1) (including submitting a complaint orally).

[2] So in original. No subsecs. (d) and (e) have been enacted.

(g) Submission of staffing information based on payroll data in a uniform format

Beginning not later than 2 years after March 23, 2010, and after consulting with State long-term care ombudsman programs, consumer advocacy groups, provider stakeholder groups, employees and their representatives, and other parties the Secretary deems appropriate, the Secretary shall require a facility to electronically submit to the Secretary direct care staffing information (including information with respect to agency and contract staff) based on payroll and other verifiable and auditable data in a uniform format (according to specifications established by the Secretary in consultation with such programs, groups, and parties). Such specifications shall require that the information submitted under the preceding sentence—

(1) specify the category of work a certified employee performs (such as whether the employee is a registered nurse, licensed practical nurse, licensed vocational nurse, certified nursing assistant, therapist, or other medical personnel);

(2) include resident census data and information on resident case mix;

(3) include a regular reporting schedule; and

(4) include information on employee turnover and tenure and on the hours of care provided by each category of certified employees referenced in paragraph (1) per resident per day.

Nothing in this subsection shall be construed as preventing the Secretary from requiring submission of such information with respect to specific categories, such as nursing staff, before other categories of certified employees. Information under this subsection with respect to agency and contract staff shall be kept separate from information on employee staffing.

(h) Notification of facility closure

(1) In general

Any individual who is the administrator of a facility must—

(A) submit to the Secretary, the State long-term care ombudsman, residents of the facility, and the legal representatives of such residents or other responsible parties, written notification of an impending closure—

(i) subject to clause (ii), not later than the date that is 60 days prior to the date of such closure; and

(ii) in the case of a facility where the Secretary terminates the facility's participation under this subchapter, not later than the date that the Secretary determines appropriate;

(B) ensure that the facility does not admit any new residents on or after the date on which such written notification is submitted; and

(C) include in the notice a plan for the transfer and adequate relocation of the residents of the facility by a specified date prior to closure that has been approved by the State, including assurances that the residents will be transferred to the most appropriate facility or other setting in terms of

quality, services, and location, taking into consideration the needs, choice, and best interests of each resident.

(2) Relocation

(A) In general

The State shall ensure that, before a facility closes, all residents of the facility have been successfully relocated to another facility or an alternative home and community-based setting.

(B) Continuation of payments until residents relocated

The Secretary may, as the Secretary determines appropriate, continue to make payments under this subchapter with respect to residents of a facility that has submitted a notification under paragraph (1) during the period beginning on the date such notification is submitted and ending on the date on which the resident is successfully relocated.

(3) Sanctions

Any individual who is the administrator of a facility that fails to comply with the requirements of paragraph (1)—

(A) shall be subject to a civil monetary penalty of up to $100,000;

(B) may be subject to exclusion from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title); and

(C) shall be subject to any other penalties that may be prescribed by law.

(4) Procedure

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under paragraph (3) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1128I, as added and amended Pub. L. 111–148, title VI, §§ 6102, 6105(a), 6106, 6113(a), Mar. 23, 2010, 124 Stat. 702, 711, 712, 718.)

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–148, § 6105(a), added subsec. (f).

Subsec. (g). Pub. L. 111–148, § 6106, added subsec. (g).

Subsec. (h). Pub. L. 111–148, § 6113(a), added subsec. (h).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title VI, § 6105(b), Mar. 23, 2010, 124 Stat. 712, provided that: ''The amendment made by this section [amending this section] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010].''

Pub. L. 111–148, title VI, § 6113(c), Mar. 23, 2010, 124 Stat. 720, provided that: ''The amendments made by this section [amending this section and section 1395i–3 of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 23, 2010].''

NATIONAL INDEPENDENT MONITOR DEMONSTRATION PROJECT

Pub. L. 111–148, title VI, § 6112, Mar. 23, 2010, 124 Stat. 716, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services], in consultation with the Inspector General of the Department of Health and Human Services, shall conduct a demonstration project to develop, test, and implement an independent monitor program to oversee interstate and large intrastate chains of skilled nursing facilities and nursing facilities.

''(2) SELECTION.—The Secretary shall select chains of skilled nursing facilities and nursing facilities described in paragraph (1) to participate in the demonstration project under this section from among those chains that submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(3) DURATION.—The Secretary shall conduct the demonstration project under this section for a 2-year period.

''(4) IMPLEMENTATION.—The Secretary shall implement the demonstration project under this section not later than 1 year after the date of the enactment of this Act [Mar. 23, 2010].

''(b) REQUIREMENTS.—The Secretary shall evaluate chains selected to participate in the demonstration project under this section based on criteria selected by the Secretary, including where evidence suggests that a number of the facilities of the chain are experiencing serious safety and quality of care problems. Such criteria may include the evaluation of a chain that includes a number of facilities participating in the 'Special Focus Facility' program (or a successor program) or multiple facilities with a record of repeated serious safety and quality of care deficiencies.

''(c) RESPONSIBILITIES.—An independent monitor that enters into a contract with the Secretary to participate in the conduct of the demonstration project under this section shall—

''(1) conduct periodic reviews and prepare root-cause quality and deficiency analyses of a chain to assess if facilities of the chain are in compliance with State and Federal laws and regulations applicable to the facilities;

''(2) conduct sustained oversight of the efforts of the chain, whether publicly or privately held, to achieve compliance by facilities of the chain with State and Federal laws and regulations applicable to the facilities;

''(3) analyze the management structure, distribution of expenditures, and nurse staffing levels of facilities of the chain in relation to resident census, staff turnover rates, and tenure;

''(4) report findings and recommendations with respect to such reviews, analyses, and oversight to the chain and facilities of the chain, to the Secretary, and to relevant States; and

''(5) publish the results of such reviews, analyses, and oversight.

''(d) IMPLEMENTATION OF RECOMMENDATIONS.—

''(1) RECEIPT OF FINDING BY CHAIN.—Not later than 10 days after receipt of a finding of an independent monitor under subsection (c)(4), a chain participating in the demonstration project shall submit to the independent monitor a report—

''(A) outlining corrective actions the chain will take to implement the recommendations in such report; or

''(B) indicating that the chain will not implement such recommendations, and why it will not do so.

''(2) RECEIPT OF REPORT BY INDEPENDENT MONITOR.—Not later than 10 days after receipt of a report submitted by a chain under paragraph (1), an independent monitor shall finalize its recommendations and submit a report to the chain and facilities of the chain, the Secretary, and the State or States, as appropriate, containing such final recommendations.

''(e) COST OF APPOINTMENT.—A chain shall be responsible for a portion of the costs associated with the appointment of independent monitors under the demonstration project under this section. The chain shall pay such portion to the Secretary (in an amount and in accordance with procedures established by the Secretary).

''(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.) as may be necessary for the purpose of carrying out the demonstration project under this section.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

''(h) DEFINITIONS.—In this section:

''(1) ADDITIONAL DISCLOSABLE PARTY.—The term 'additional disclosable party' has the meaning given such term in section 1124(c)(5)(A) of the Social Security Act [42 U.S.C. 1320a–3(c)(5)(A)], as added by section 4201(a) [probably should be ''6101(a)''].

''(2) FACILITY.—The term 'facility' means a skilled nursing facility or a nursing facility.

''(3) NURSING FACILITY.—The term 'nursing facility' has the meaning given such term in section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)).

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services, acting through the Assistant Secretary for Planning and Evaluation.

''(5) SKILLED NURSING FACILITY.—The term 'skilled nursing facility' has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395(a) [1395i–3(a)]).

''(i) EVALUATION AND REPORT.—

''(1) EVALUATION.—The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall evaluate the demonstration project conducted under this section.

''(2) REPORT.—Not later than 180 days after the completion of the demonstration project under this section, the Secretary shall submit to Congress a report containing the results of the evaluation conducted under paragraph (1), together with recommendations—

''(A) as to whether the independent monitor program should be established on a permanent basis;

''(B) if the Secretary recommends that such program be so established, on appropriate procedures and mechanisms for such establishment; and

''(C) for such legislation and administrative action as the Secretary determines appropriate.''

§ 1320a–7k. Medicare and Medicaid program integrity provisions

(a) Data matching

(1) Integrated data repository

(A) Inclusion of certain data

(i) In general

The Integrated Data Repository of the Centers for Medicare & Medicaid Services shall include, at a minimum, claims and payment data from the following:

(I) The programs under subchapters XVIII and XIX (including parts A, B, C, and D of subchapter XVIII).

(II) The program under subchapter XXI.

(III) Health-related programs administered by the Secretary of Veterans Affairs.

(IV) Health-related programs administered by the Secretary of Defense.

(V) The program of old-age, survivors, and disability insurance benefits established under subchapter II.

(VI) The Indian Health Service and the Contract Health Service program.

(ii) Priority for inclusion of certain data

Inclusion of the data described in subclause (I) of such clause[1] in the Integrated Data Repository shall be a priority. Data described in subclauses (II) through (VI) of such clause[1] shall be included in the Integrated Data Repository as appropriate.

(B) Data sharing and matching

(i) In general

The Secretary shall enter into agreements with the individuals described in clause (ii) under which such individuals share and match data in the system of records of the respective agencies of such individuals with data in the system of records of the Department of Health and Human Services for the purpose of identifying potential fraud, waste, and abuse under the programs under subchapters XVIII and XIX.

(ii) Individuals described

The following individuals are described in this clause:

(I) The Commissioner of Social Security.

(II) The Secretary of Veterans Affairs.

(III) The Secretary of Defense.

(IV) The Director of the Indian Health Service.

(iii) Definition of system of records

For purposes of this paragraph, the term ''system of records'' has the meaning given such term in section 552a(a)(5) of title 5.

(2) Access to claims and payment databases

For purposes of conducting law enforcement and oversight activities and to the extent consistent with applicable information, privacy, security, and disclosure laws, including the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 and section 552a of title 5, and subject to any information systems security requirements under such laws or otherwise required by the Secretary, the Inspector General of the Department of Health and Human Services and the Attorney General shall have access to claims and payment data of the Department of Health and Human Services and its contractors related to subchapters XVIII, XIX, and XXI.

(b) OIG authority to obtain information

(1) In general

Notwithstanding and in addition to any other provision of law, the Inspector General of the Department of Health and Human Services may, for purposes of protecting the integrity of the programs under subchapters XVIII and XIX, obtain information from any individual (including a beneficiary provided all applicable privacy protections are followed) or entity that—

(A) is a provider of medical or other items or services, supplier, grant recipient, contractor, or subcontractor; or

(B) directly or indirectly provides, orders, manufactures, distributes, arranges for, prescribes, supplies, or receives medical or other items or services payable by any Federal health care program (as defined in section 1320a–7b(f) of this title) regardless of

[1] So in original. Probably should be ''clause (i)''.

how the item or service is paid for, or to whom such payment is made.

(2) Inclusion of certain information

Information which the Inspector General may obtain under paragraph (1) includes any supporting documentation necessary to validate claims for payment or payments under subchapter XVIII or XIX, including a prescribing physician's medical records for an individual who is prescribed an item or service which is covered under part B of subchapter XVIII, a covered part D drug (as defined in section 1395w–102(e) of this title) for which payment is made under an MA–PD plan under part C of such subchapter, or a prescription drug plan under part D of such subchapter, and any records necessary for evaluation of the economy, efficiency, and effectiveness of the programs under subchapters XVIII and XIX.

(c) Administrative remedy for knowing participation by beneficiary in health care fraud scheme

(1) In general

In addition to any other applicable remedies, if an applicable individual has knowingly participated in a Federal health care fraud offense or a conspiracy to commit a Federal health care fraud offense, the Secretary shall impose an appropriate administrative penalty commensurate with the offense or conspiracy.

(2) Applicable individual

For purposes of paragraph (1), the term ''applicable individual'' means an individual—

(A) entitled to, or enrolled for, benefits under part A of subchapter XVIII or enrolled under part B of such subchapter;

(B) eligible for medical assistance under a State plan under subchapter XIX or under a waiver of such plan; or

(C) eligible for child health assistance under a child health plan under subchapter XXI.

(d) Reporting and returning of overpayments

(1) In general

If a person has received an overpayment, the person shall—

(A) report and return the overpayment to the Secretary, the State, an intermediary, a carrier, or a contractor, as appropriate, at the correct address; and

(B) notify the Secretary, State, intermediary, carrier, or contractor to whom the overpayment was returned in writing of the reason for the overpayment.

(2) Deadline for reporting and returning overpayments

An overpayment must be reported and returned under paragraph (1) by the later of—

(A) the date which is 60 days after the date on which the overpayment was identified; or

(B) the date any corresponding cost report is due, if applicable.

(3) Enforcement

Any overpayment retained by a person after the deadline for reporting and returning the overpayment under paragraph (2) is an obligation (as defined in section 3729(b)(3) of title 31) for purposes of section 3729 of such title.

(4) Definitions

In this subsection:

(A) Knowing and knowingly

The terms ''knowing'' and ''knowingly'' have the meaning given those terms in section 3729(b) of title 31.

(B) Overpayment

The term ''overpayment'' means any funds that a person receives or retains under subchapter XVIII or XIX to which the person, after applicable reconciliation, is not entitled under such subchapter.

(C) Person

(i) In general

The term ''person'' means a provider of services, supplier, medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title), Medicare Advantage organization (as defined in section 1395w–28(a)(1) of this title), or PDP sponsor (as defined in section 1395w–151(a)(13) of this title).

(ii) Exclusion

Such term does not include a beneficiary.

(e) Inclusion of national provider identifier on all applications and claims

The Secretary shall promulgate a regulation that requires, not later than January 1, 2011, all providers of medical or other items or services and suppliers under the programs under subchapters XVIII and XIX that qualify for a national provider identifier to include their national provider identifier on all applications to enroll in such programs and on all claims for payment submitted under such programs.

(Aug. 14, 1935, ch. 531, title XI, § 1128J, as added Pub. L. 111–148, title VI, § 6402(a), Mar. 23, 2010, 124 Stat. 753.)

REFERENCES IN TEXT

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

§ 1320a–7*l*. Nationwide program for national and State background checks on direct patient access employees of long-term care facilities and providers

(a) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), shall establish a program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis (in this subsection, such program shall be referred to as the ''nationwide program''). Except for the following modifications, the Secretary shall carry out the nationwide program under similar terms

and conditions as the pilot program under section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2257), including the prohibition on hiring abusive workers and the authorization of the imposition of penalties by a participating State under subsection (b)(3)(A) and (b)(6), respectively, of such section 307:

(1) Agreements

(A) Newly participating States

The Secretary shall enter into agreements with each State—

(i) that the Secretary has not entered into an agreement with under subsection (c)(1) of such section 307;

(ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(B) Certain previously participating States

The Secretary shall enter into agreements with each State—

(i) that the Secretary has entered into an agreement with under such subsection (c)(1), but only in the case where such agreement did not require the State to conduct background checks under the program established under subsection (a) of such section 307 on a Statewide basis;

(ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and

(iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(2) Nonapplication of selection criteria

The selection criteria required under subsection (c)(3)(B) of such section 307 shall not apply.

(3) Required fingerprint check as part of criminal history background check

The procedures established under subsection (b)(1) of such section 307 shall—

(A) require that the long-term care facility or provider (or the designated agent of the long-term care facility or provider) obtain State and national criminal history background checks on the prospective employee through such means as the Secretary determines appropriate, efficient, and effective that utilize a search of State-based abuse and neglect registries and databases, including the abuse and neglect registries of another State in the case where a prospective employee previously resided in that State, State criminal history records, the records of any proceedings in the State that may contain disqualifying information about prospective employees (such as proceedings conducted by State professional licensing and disciplinary boards and State Medicaid Fraud Control Units), and Federal criminal history records, including a fingerprint check using the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation;

(B) require States to describe and test methods that reduce duplicative fingerprinting, including providing for the development of ''rap back'' capability by the State such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee's fingerprints match the prints on file with the State law enforcement department, the department will immediately inform the State and the State will immediately inform the long-term care facility or provider which employs the direct patient access employee of such conviction; and

(C) require that criminal history background checks conducted under the nationwide program remain valid for a period of time specified by the Secretary.

(4) State requirements

An agreement entered into under paragraph (1) shall require that a participating State—

(A) be responsible for monitoring compliance with the requirements of the nationwide program;

(B) have procedures in place to—

(i) conduct screening and criminal history background checks under the nationwide program in accordance with the requirements of this section;

(ii) monitor compliance by long-term care facilities and providers with the procedures and requirements of the nationwide program;

(iii) as appropriate, provide for a provisional period of employment by a long-term care facility or provider of a direct patient access employee, not to exceed 60 days, pending completion of the required criminal history background check and, in the case where the employee has appealed the results of such background check, pending completion of the appeals process, during which the employee shall be subject to direct on-site supervision (in accordance with procedures established by the State to ensure that a long-term care facility or provider furnishes such direct on-site supervision);

(iv) provide an independent process by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the nationwide program, including the specification of criteria for appeals for direct patient access employees found to have disqualifying information which shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and relevancy of the particular disqualifying information with respect to the current employment of the individual;

(v) provide for the designation of a single State agency as responsible for—

(I) overseeing the coordination of any State and national criminal history

background checks requested by a long-term care facility or provider (or the designated agent of the long-term care facility or provider) utilizing a search of State and Federal criminal history records, including a fingerprint check of such records;

(II) overseeing the design of appropriate privacy and security safeguards for use in the review of the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

(III) immediately reporting to the long-term care facility or provider that requested the criminal history background check the results of such review; and

(IV) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), reporting the existence of such conviction to the database established under that section;

(vi) determine which individuals are direct patient access employees (as defined in paragraph (6)(B)) for purposes of the nationwide program;

(vii) as appropriate, specify offenses, including convictions for violent crimes, for purposes of the nationwide program; and

(viii) describe and test methods that reduce duplicative fingerprinting, including providing for the development of ''rap back'' capability such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee's fingerprints match the prints on file with the State law enforcement department—

(I) the department will immediately inform the State agency designated under clause (v) and such agency will immediately inform the facility or provider which employs the direct patient access employee of such conviction; and

(II) the State will provide, or will require the facility to provide, to the employee a copy of the results of the criminal history background check conducted with respect to the employee at no charge in the case where the individual requests such a copy.

(5) Payments

(A) Newly participating States

(i) In general

As part of the application submitted by a State under paragraph (1)(A)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).

(ii) Federal match

The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(A) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed $3,000,000.

(B) Previously participating States

(i) In general

As part of the application submitted by a State under paragraph (1)(B)(iii), the State shall guarantee, with respect to the costs to be incurred by the State in carrying out the nationwide program, that the State will make available (directly or through donations from public or private entities) a particular amount of non-Federal contributions, as a condition of receiving the Federal match under clause (ii).

(ii) Federal match

The payment amount to each State that the Secretary enters into an agreement with under paragraph (1)(B) shall be 3 times the amount that the State guarantees to make available under clause (i), except that in no case may the payment amount exceed $1,500,000.

(6) Definitions

Under the nationwide program:

(A) Conviction for a relevant crime

The term ''conviction for a relevant crime'' means any Federal or State criminal conviction for—

(i) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7[(a)]); or

(ii) such other types of offenses as a participating State may specify for purposes of conducting the program in such State.

(B) Disqualifying information

The term ''disqualifying information'' means a conviction for a relevant crime or a finding of patient or resident abuse.

(C) Finding of patient or resident abuse

The term ''finding of patient or resident abuse'' means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

(i) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

(ii) such other types of acts as a participating State may specify for purposes of conducting the program in such State.

(D) Direct patient access employee

The term ''direct patient access employee'' means any individual who has access to a pa-

tient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program. Such term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve (or may involve) one-on-one contact with a patient or resident of the long-term care facility or provider.

(E) Long-term care facility or provider

The term ''long-term care facility or provider'' means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]:

(i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))).

(ii) A nursing facility (as defined in section 1919(a) of such Act (42 U.S.C. 1396r(a))).

(iii) A home health agency.

(iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act (42 U.S.C. 1395x(dd)(1))).

(v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act (42 U.S.C. 1395ww(d)(1)(B)(iv))).

(vi) A provider of personal care services.

(vii) A provider of adult day care.

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility that provides a level of care established by the Secretary.

(ix) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act (42 U.S.C. 1396d(d))).

(x) Any other facility or provider of long-term care services under such titles as the participating State determines appropriate.

(7) Evaluation and report

(A) Evaluation

(i) In general

The Inspector General of the Department of Health and Human Services shall conduct an evaluation of the nationwide program.

(ii) Inclusion of specific topics

The evaluation conducted under clause (i) shall include the following:

(I) A review of the various procedures implemented by participating States for long-term care facilities or providers, including staffing agencies, to conduct background checks of direct patient access employees under the nationwide program and identification of the most appropriate, efficient, and effective procedures for conducting such background checks.

(II) An assessment of the costs of conducting such background checks (including start up and administrative costs).

(III) A determination of the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for long-term care facilities or providers.

(IV) An assessment of the impact of the nationwide program on reducing the number of incidents of neglect, abuse, and misappropriation of resident property to the extent practicable.

(V) An evaluation of other aspects of the nationwide program, as determined appropriate by the Secretary.

(B) Report

Not later than 180 days after the completion of the nationwide program, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the results of the evaluation conducted under subparagraph (A).

(b) Funding

(1) Notification

The Secretary of Health and Human Services shall notify the Secretary of the Treasury of the amount necessary to carry out the nationwide program under this section for the period of fiscal years 2010 through 2012, except that in no case shall such amount exceed $160,000,000.

(2) Transfer of funds

(A) In general

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide for the transfer to the Secretary of Health and Human Services of the amount specified as necessary to carry out the nationwide program under paragraph (1). Such amount shall remain available until expended.

(B) Reservation of funds for conduct of evaluation

The Secretary may reserve not more than $3,000,000 of the amount transferred under subparagraph (A) to provide for the conduct of the evaluation under subsection (a)(7)(A).

(Pub. L. 111–148, title VI, §6201, Mar. 23, 2010, 124 Stat. 721.)

REFERENCES IN TEXT

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, referred to in subsec. (a), is section 307 of Pub. L. 108–173, which is set out as a note under this section.

The Social Security Act, referred to in subsec. (a)(6)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Patient Protection and Affordable Care Act, and not as part of the Social Security Act which comprises this chapter.

PILOT PROGRAM

Pub. L. 108–173, title III, §307, Dec. 8, 2003, 117 Stat. 2257, provided that:

''(a) AUTHORITY TO CONDUCT PROGRAM.—The Secretary [of Health and Human Services], in consultation with the Attorney General, shall establish a pilot program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—Under the pilot program, a long-term care facility or provider in a participating State, prior to employing a direct patient access employee that is first hired on or after the commencement date of the pilot program in the State, shall conduct a background check on the employee in accordance with such procedures as the participating State shall establish.

''(2) PROCEDURES.—

''(A) IN GENERAL.—The procedures established by a participating State under paragraph (1) should be designed to—

''(i) give a prospective direct access patient employee notice that the long-term care facility or provider is required to perform background checks with respect to new employees;

''(ii) require, as a condition of employment, that the employee—

''(I) provide a written statement disclosing any disqualifying information;

''(II) provide a statement signed by the employee authorizing the facility to request national and State criminal history background checks;

''(III) provide the facility with a rolled set of the employee's fingerprints; and

''(IV) provide any other identification information the participating State may require;

''(iii) require the facility or provider to check any available registries that would be likely to contain disqualifying information about a prospective employee of a long-term care facility or provider; and

''(iv) permit the facility or provider to obtain State and national criminal history background checks on the prospective employee through a 10-fingerprint check that utilizes State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.

''(B) ELIMINATION OF UNNECESSARY CHECKS.—The procedures established by a participating State under paragraph (1) shall permit a long-term care facility or provider to terminate the background check at any stage at which the facility or provider obtains disqualifying information regarding a prospective direct patient access employee.

''(3) PROHIBITION ON HIRING OF ABUSIVE WORKERS.—

''(A) IN GENERAL.—A long-term care facility or provider may not knowingly employ any direct patient access employee who has any disqualifying information.

''(B) PROVISIONAL EMPLOYMENT.—

''(i) IN GENERAL.—Under the pilot program, a participating State may permit a long-term care facility or provider to provide for a provisional period of employment for a direct patient access employee pending completion of a background check, subject to such supervision during the employee's provisional period of employment as the participating State determines appropriate.

''(ii) SPECIAL CONSIDERATION FOR CERTAIN FACILITIES AND PROVIDERS.—In determining what constitutes appropriate supervision of a provisional employee, a participating State shall take into account cost or other burdens that would be imposed on small rural long-term care facilities or providers, as well as the nature of care delivered by such facilities or providers that are home health agencies or providers of hospice care.

''(4) USE OF INFORMATION; IMMUNITY FROM LIABILITY.—

''(A) USE OF INFORMATION.—A participating State shall ensure that a long-term care facility or provider that obtains information about a direct patient access employee pursuant to a background check uses such information only for the purpose of determining the suitability of the employee for employment.

''(B) IMMUNITY FROM LIABILITY.—A participating State shall ensure that a long-term care facility or provider that, in denying employment for an individual selected for hire as a direct patient access employee (including during any period of provisional employment), reasonably relies upon information obtained through a background check of the individual, shall not be liable in any action brought by the individual based on the employment determination resulting from the information.

''(5) AGREEMENTS WITH EMPLOYMENT AGENCIES.—A participating State may establish procedures for facilitating the conduct of background checks on prospective direct patient access employees that are hired by a long-term care facility or provider through an employment agency (including a temporary employment agency).

''(6) PENALTIES.—A participating State may impose such penalties as the State determines appropriate to enforce the requirements of the pilot program conducted in that State.

''(c) PARTICIPATING STATES.—

''(1) IN GENERAL.—The Secretary shall enter into agreements with not more than 10 States to conduct the pilot program under this section in such States.

''(2) REQUIREMENTS FOR STATES.—An agreement entered into under paragraph (1) shall require that a participating State—

''(A) be responsible for monitoring compliance with the requirements of the pilot program;

''(B) have procedures by which a provisional employee or an employee may appeal or dispute the accuracy of the information obtained in a background check performed under the pilot program; and

''(C) agree to—

''(i) review the results of any State or national criminal history background checks conducted regarding a prospective direct patient access employee to determine whether the employee has any conviction for a relevant crime;

''(ii) immediately report to the entity that requested the criminal history background checks the results of such review; and

''(iii) in the case of an employee with a conviction for a relevant crime that is subject to reporting under section 1128E of the Social Security Act (42 U.S.C. 1320a–7e), report the existence of such conviction to the database established under that section.

''(3) APPLICATION AND SELECTION CRITERIA.—

''(A) APPLICATION.—A State seeking to participate in the pilot program established under this section, shall submit an application to the Secretary containing such information and at such time as the Secretary may specify.

''(B) SELECTION CRITERIA.—

''(i) IN GENERAL.—In selecting States to participate in the pilot program, the Secretary shall establish criteria to ensure—

''(I) geographic diversity;

''(II) the inclusion of a variety of long-term care facilities or providers;

''(III) the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program; and

''(IV) the evaluation of a variety of penalties (monetary and otherwise) used by participating States to enforce the requirements of the pilot program in such States.

''(ii) ADDITIONAL CRITERIA.—The Secretary shall, to the greatest extent practicable, select

States to participate in the pilot program in accordance with the following:

''(I) At least one participating State should permit long-term care facilities or providers to provide for a provisional period of employment pending completion of a background check and at least one such State should not permit such a period of employment.

''(II) At least one participating State should establish procedures under which employment agencies (including temporary employment agencies) may contact the State directly to conduct background checks on prospective direct patient access employees.

''(III) At least one participating State should include patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State.

''(iii) INCLUSION OF STATES WITH EXISTING PROGRAMS.—Nothing in this section shall be construed as prohibiting any State which, as of the date of the enactment of this Act [Dec. 8, 2003], has procedures for conducting background checks on behalf of any entity described in subsection (g)(5) from being selected to participate in the pilot program conducted under this section.

''(d) PAYMENTS.—Of the amounts made available under subsection (f) to conduct the pilot program under this section, the Secretary shall—

''(1) make payments to participating States for the costs of conducting the pilot program in such States; and

''(2) reserve up to 4 percent of such amounts to conduct the evaluation required under subsection (e).

''(e) EVALUATION.—The Secretary, in consultation with the Attorney General, shall conduct by grant, contract, or interagency agreement an evaluation of the pilot program conducted under this section. Such evaluation shall—

''(1) review the various procedures implemented by participating States for long-term care facilities or providers to conduct background checks of direct patient access employees and identify the most efficient, effective, and economical procedures for conducting such background checks;

''(2) assess the costs of conducting such background checks (including start-up and administrative costs);

''(3) consider the benefits and problems associated with requiring employees or facilities or providers to pay the costs of conducting such background checks;

''(4) consider whether the costs of conducting such background checks should be allocated between the medicare and medicaid programs and if so, identify an equitable methodology for doing so;

''(5) determine the extent to which conducting such background checks leads to any unintended consequences, including a reduction in the available workforce for such facilities or providers;

''(6) review forms used by participating States in order to develop, in consultation with the Attorney General, a model form for such background checks;

''(7) determine the effectiveness of background checks conducted by employment agencies; and

''(8) recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers.

''(f) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary to carry out the pilot program under this section for the period of fiscal years 2004 through 2007, $25,000,000.

''(g) DEFINITIONS.—In this section:

''(1) CONVICTION FOR A RELEVANT CRIME.—The term 'conviction for a relevant crime' means any Federal or State criminal conviction for—

''(A) any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7[(a)]); and

''(B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.

''(2) DISQUALIFYING INFORMATION.—The term 'disqualifying information' means a conviction for a relevant crime or a finding of patient or resident abuse.

''(3) FINDING OF PATIENT OR RESIDENT ABUSE.—The term 'finding of patient or resident abuse' means any substantiated finding by a State agency under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i–3(g)(1)(C), 1396r(g)(1)(C)) or a Federal agency that a direct patient access employee has committed—

''(A) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

''(B) such other types of acts as a participating State may specify for purposes of conducting the pilot program in such State.

''(4) DIRECT PATIENT ACCESS EMPLOYEE.—The term 'direct patient access employee' means any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider, as determined by a participating State for purposes of conducting the pilot program in such State.

''(5) LONG-TERM CARE FACILITY OR PROVIDER.—

''(A) IN GENERAL.—The term 'long-term care facility or provider' means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]:

''(i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act) (42 U.S.C. 1395i–3(a)).

''(ii) A nursing facility (as defined in section 1919(a) in such Act) (42 U.S.C. 1396r(a)).

''(iii) A home health agency.

''(iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act) (42 U.S.C. 1395x(dd)(1)).

''(v) A long-term care hospital (as described in section 1886(d)(1)(B)(iv) of such Act) (42 U.S.C. 1395ww(d)(1)(B)(iv)).

''(vi) A provider of personal care services.

''(vii) A residential care provider that arranges for, or directly provides, long-term care services.

''(viii) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) [(]42 U.S.C. 1396d(d)).

''(B) ADDITIONAL FACILITIES OR PROVIDERS.—During the first year in which a pilot program under this section is conducted in a participating State, the State may expand the list of facilities or providers under subparagraph (A) (on a phased-in basis or otherwise) to include such other facilities or providers of long-term care services under such titles as the participating State determines appropriate.

''(C) EXCEPTIONS.—Such term does not include—

''(i) any facility or entity that provides, or is a provider of, services described in subparagraph (A) that are exclusively provided to an individual pursuant to a self-directed arrangement that meets such requirements as the participating State may establish in accordance with guidance from the Secretary; or

''(ii) any such arrangement that is obtained by a patient or resident functioning as an employer.

''(6) PARTICIPATING STATE.—The term 'participating State' means a State with an agreement under subsection (c)(1).''

§ 1320a–7m. Use of predictive modeling and other analytics technologies to identify and prevent waste, fraud, and abuse in the Medicare fee-for-service program

(a) Use in the Medicare fee-for-service program

The Secretary shall use predictive modeling and other analytics technologies (in this section

referred to as ''predictive analytics technologies'') to identify improper claims for reimbursement and to prevent the payment of such claims under the Medicare fee-for-service program.

(b) Predictive analytics technologies requirements

The predictive analytics technologies used by the Secretary shall—

(1) capture Medicare provider and Medicare beneficiary activities across the Medicare fee-for-service program to provide a comprehensive view across all providers, beneficiaries, and geographies within such program in order to—

(A) identify and analyze Medicare provider networks, provider billing patterns, and beneficiary utilization patterns; and

(B) identify and detect any such patterns and networks that represent a high risk of fraudulent activity;

(2) be integrated into the existing Medicare fee-for-service program claims flow with minimal effort and maximum efficiency;

(3) be able to—

(A) analyze large data sets for unusual or suspicious patterns or anomalies or contain other factors that are linked to the occurrence of waste, fraud, or abuse;

(B) undertake such analysis before payment is made; and

(C) prioritize such identified transactions for additional review before payment is made in terms of the likelihood of potential waste, fraud, and abuse to more efficiently utilize investigative resources;

(4) capture outcome information on adjudicated claims for reimbursement to allow for refinement and enhancement of the predictive analytics technologies on the basis of such outcome information, including post-payment information about the eventual status of a claim; and

(5) prevent the payment of claims for reimbursement that have been identified as potentially wasteful, fraudulent, or abusive until such time as the claims have been verified as valid.

(c) Implementation requirements

(1) Request for proposals

Not later than January 1, 2011, the Secretary shall issue a request for proposals to carry out this section during the first year of implementation. To the extent the Secretary determines appropriate—

(A) the initial request for proposals may include subsequent implementation years; and

(B) the Secretary may issue additional requests for proposals with respect to subsequent implementation years.

(2) First implementation year

The initial request for proposals issued under paragraph (1) shall require the contractors selected to commence using predictive analytics technologies on July 1, 2011, in the 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program.

(3) Second implementation year

Based on the results of the report and recommendation required under subsection (e)(1)(B), the Secretary shall expand the use of predictive analytics technologies on October 1, 2012, to apply to an additional 10 States identified by the Secretary as having the highest risk of waste, fraud, or abuse in the Medicare fee-for-service program, after the States identified under paragraph (2).

(4) Third implementation year

Based on the results of the report and recommendation required under subsection (e)(2), the Secretary shall expand the use of predictive analytics technologies on January 1, 2014, to apply to the Medicare fee-for-service program in any State not identified under paragraph (2) or (3) and the commonwealths and territories.

(5) Fourth implementation year

Based on the results of the report and recommendation required under subsection (e)(3), the Secretary shall expand the use of predictive analytics technologies, beginning April 1, 2015, to apply to Medicaid and CHIP. To the extent the Secretary determines appropriate, such expansion may be made on a phased-in basis.

(6) Option for refinement and evaluation

If, with respect to the first, second, or third implementation year, the Inspector General of the Department of Health and Human Services certifies as part of the report required under subsection (e) for that year no or only nominal actual savings to the Medicare fee-for-service program, the Secretary may impose a moratorium, not to exceed 12 months, on the expansion of the use of predictive analytics technologies under this section for the succeeding year in order to refine the use of predictive analytics technologies to achieve more than nominal savings before further expansion. If a moratorium is imposed in accordance with this paragraph, the implementation dates applicable for the succeeding year or years shall be adjusted to reflect the length of the moratorium period.

(d) Contractor selection, qualifications, and data access requirements

(1) Selection

(A) In general

The Secretary shall select contractors to carry out this section using competitive procedures as provided for in the Federal Acquisition Regulation.

(B) Number of contractors

The Secretary shall select at least 2 contractors to carry out this section with respect to any year.

(2) Qualifications

(A) In general

The Secretary shall enter into a contract under this section with an entity only if the entity—

(i) has leadership and staff who—

(I) have the appropriate clinical knowledge of, and experience with, the pay-

ment rules and regulations under the Medicare fee-for-service program; and

(II) have direct management experience and proficiency utilizing predictive analytics technologies necessary to carry out the requirements under subsection (b); or

(ii) has a contract, or will enter into a contract, with another entity that has leadership and staff meeting the criteria described in clause (i).

(B) Conflict of interest

The Secretary may only enter into a contract under this section with an entity to the extent that the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(3) Data access

The Secretary shall provide entities with a contract under this section with appropriate access to data necessary for the entity to use predictive analytics technologies in accordance with the contract.

(e) Reporting requirements

(1) First implementation year report

Not later than 3 months after the completion of the first implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes the following:

(A) A description of the implementation of the use of predictive analytics technologies during the year.

(B) A certification of the Inspector General of the Department of Health and Human Services that—

(i) specifies the actual and projected savings to the Medicare fee-for-service program as a result of the use of predictive analytics technologies, including estimates of the amounts of such savings with respect to both improper payments recovered and improper payments avoided;

(ii) the actual and projected savings to the Medicare fee-for-service program as a result of such use of predictive analytics technologies relative to the return on investment for the use of such technologies and in comparison to other strategies or technologies used to prevent and detect fraud, waste, and abuse in the Medicare fee-for-service program; and

(iii) includes recommendations regarding—

(I) whether the Secretary should continue to use predictive analytics technologies;

(II) whether the use of such technologies should be expanded in accordance with the requirements of subsection (c); and

(III) any modifications or refinements that should be made to increase the amount of actual or projected savings or mitigate any adverse impact on Medicare beneficiaries or providers.

(C) An analysis of the extent to which the use of predictive analytics technologies successfully prevented and detected waste, fraud, or abuse in the Medicare fee-for-service program.

(D) A review of whether the predictive analytics technologies affected access to, or the quality of, items and services furnished to Medicare beneficiaries.

(E) A review of what effect, if any, the use of predictive analytics technologies had on Medicare providers.

(F) Any other items determined appropriate by the Secretary.

(2) Second year implementation report

Not later than 3 months after the completion of the second implementation year under this section, the Secretary shall submit to the appropriate committees of Congress and make available to the public a report that includes, with respect to such year, the items required under paragraph (1) as well as any other additional items determined appropriate by the Secretary with respect to the report for such year.

(3) Third year implementation report

Not later than 3 months after the completion of the third implementation year under this section, the Secretary shall submit to the appropriate committees of Congress, and make available to the public, a report that includes[1] with respect to such year, the items required under paragraph (1),[2] as well as any other additional items determined appropriate by the Secretary with respect to the report for such year, and the following:

(A) An analysis of the cost-effectiveness and feasibility of expanding the use of predictive analytics technologies to Medicaid and CHIP.

(B) An analysis of the effect, if any, the application of predictive analytics technologies to claims under Medicaid and CHIP would have on States and the commonwealths and territories.

(C) Recommendations regarding the extent to which technical assistance may be necessary to expand the application of predictive analytics technologies to claims under Medicaid and CHIP, and the type of any such assistance.

(f) Independent evaluation and report

(1) Evaluation

Upon completion of the first year in which predictive analytics technologies are used with respect to claims under Medicaid and CHIP, the Secretary shall, by grant, contract, or interagency agreement, conduct an independent evaluation of the use of predictive analytics technologies under the Medicare fee-for-service program and Medicaid and CHIP. The evaluation shall include an analysis with respect to each such program of the items required for the third year implementation report under subsection (e)(3).

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[1] So in original. Probably should be followed by a comma.

[2] So in original. The comma probably should not appear.

(2) Report

Not later than 18 months after the evaluation required under paragraph (1) is initiated, the Secretary shall submit a report to Congress on the evaluation that shall include the results of the evaluation, the Secretary's response to such results and, to the extent the Secretary determines appropriate, recommendations for legislation or administrative actions.

(g) Waiver authority

The Secretary may waive such provisions of titles XI, XVIII, XIX, and XXI of the Social Security Act [42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq., 1397aa et seq.], including applicable prompt payment requirements under titles XVIII and XIX of such Act, as the Secretary determines to be appropriate to carry out this section.

(h) Funding

(1) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary to carry out this section, $100,000,000 for the period beginning January 1, 2011, to remain available until expended.

(2) Reservations

(A) Independent evaluation

The Secretary shall reserve not more than 5 percent of the funds appropriated under paragraph (1) for purposes of conducting the independent evaluation required under subsection (f).

(B) Application to Medicaid and CHIP

The Secretary shall reserve such portion of the funds appropriated under paragraph (1) as the Secretary determines appropriate for purposes of providing assistance to States for administrative expenses in the event of the expansion of predictive analytics technologies to claims under Medicaid and CHIP.

(i) Definitions

In this section:

(1) Commonwealths and territories

The term ''commonwealth and territories'' includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States in which the Medicare fee-for-service program, Medicaid, or CHIP operates.

(2) CHIP

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

(3) Medicaid

The term ''Medicaid'' means the program to provide grants to States for medical assistance programs established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(4) Medicare beneficiary

The term ''Medicare beneficiary'' means an individual enrolled in the Medicare fee-for-service program.

(5) Medicare fee-for-service program

The term ''Medicare fee-for-service program'' means the original medicare fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395[c] et seq.[; 1395j et seq.]).

(6) Medicare provider

The term ''Medicare provider'' means a provider of services (as defined in subsection (u) of section 1861 of the Social Security Act (42 U.S.C. 1395x)) and a supplier (as defined in subsection (d) of such section).

(7) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services.

(8) State

The term ''State'' means each of the 50 States and the District of Columbia.

(Pub. L. 111–240, title IV, § 4241, Sept. 27, 2010, 124 Stat. 2599.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (g) and (i)(2), (3), (5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles XI, XVIII, XIX, and XXI of the Act are classified generally to subchapters XI (§ 1301 et seq.), XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XXI (§ 1397aa et seq.), respectively, of this chapter. Parts A and B of title XVIII of the Act are classified generally to Parts A (§ 1395c et seq.) and B (§ 1395j et seq.) of subchapter XVIII of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was enacted as part of the Small Business Jobs Act of 2010, and not as part of the Social Security Act which comprises this chapter.

§ 1320a–8. Civil monetary penalties and assessments for subchapters II, VIII and XVI

(a) False statements or representations of material fact; proceedings to exclude; wrongful conversions by representative payees

(1) Any person (including an organization, agency, or other entity) who—

(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, that the person knows or should know is false or misleading,

(B) makes such a statement or representation for such use with knowing disregard for the truth, or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter VIII or XVI of this chapter, if the person knows, or should know, that the statement or representation with

such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation or each receipt of such benefits or payments while withholding disclosure of such fact, except that in the case of such a person who receives a fee or other income for services performed in connection with any such determination (including a claimant representative, translator, or current or former employee of the Social Security Administration) or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, the amount of such penalty shall be not more than $7,500. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation or because of such withholding of disclosure of a material fact, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation or such a withholding of disclosure. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or subchapter VIII of this chapter, or eligible for benefits or payments under subchapter XVI of this chapter.

(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 405(j), 1007, or 1383(a)(2) of this title, a payment under subchapter II, VIII, or XVI of this chapter for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.

(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) of this section later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Commissioner of Social Security shall not make a determination adverse to any person under this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime; and

(B) involves the same transaction as in the criminal action;

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action, or for such other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inference or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;

(D) staying the proceedings;

(E) dismissal of the action;

(F) entering a default judgment;

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) of this section the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements, representations, or actions referred to in subsection (a) of this section and the circumstances under which they occurred;

(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and

(3) such other matters as justice may require.

(d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Secu-

rity under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) of this section was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner's recommendations, if any, for the modification or setting aside of the Commissioner's original order.

(3) Upon the filing of the record and the Commissioner's original or modified order with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the violation occurred, or where the person resides, as determined by the Commissioner of Social Security;

(B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;

(C)(i) by decrease of any payment of monthly insurance benefits under subchapter II of this chapter, notwithstanding section 407 of this title,

(ii) by decrease of any payment under subchapter VIII of this chapter to which the person is entitled, or

(iii) by decrease of any payment under subchapter XVI of this chapter for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI of this chapter by reason of section 1383(d)(1) of this title;

(D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;

(E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or

(F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:

(A) In the case of amounts recovered arising out of a determination relating to subchapter II of this chapter, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund.

(B) In the case of any other amounts recovered under this section, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) of this section by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner's determination to impose a penalty or assessment under this section with respect to a medical provider or

physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.

(h) Injunction

Whenever the Commissioner of Social Security has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Commissioner of Social Security may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty and assessment if any such penalty were to be imposed or to seek other appropriate relief.

(i) Delegation of authority

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Commissioner of Social Security may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General for purposes of any investigation under this section.

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) "State agency" defined

For purposes of this section, the term ''State agency'' shall have the same meaning as in section 1320a–7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a) of this section, and for an exclusion under section 1320a–7 of this title based on a recommendation under subsection (a) of this section, for the actions of the principal's agent acting within the scope of the agency.

***(l)* Protection of ongoing criminal investigations**

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II of this chapter or for benefits under subchapter VIII or XVI of this chapter, the Inspector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.

(Aug. 14, 1935, ch. 531, title XI, §1129, as added and amended Pub. L. 103–296, title I, §108(b)(10)(A), title II, §206(b)(1), (e)(1), Aug. 15, 1994, 108 Stat. 1483, 1509, 1515; Pub. L. 106–169, title II, §251(b)(6), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title I, §111(a), title II, §201(a)(1), (b), (c), Mar. 2, 2004, 118 Stat. 507, 508; Pub. L. 114–74, title VIII, §813(c), Nov. 2, 2015, 129 Stat. 603.)

REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Debt Collection Act of 1982, referred to in subsec. (e)(1)(D), is Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 5514 of Title 5, Government Employees and Organization, and Tables.

PRIOR PROVISIONS

A prior section 1320a–8, act Aug. 14, 1935, ch. 531, title XI, §1129, as added Dec. 5, 1980, Pub. L. 96–499, title IX, §914(a), 94 Stat. 2621; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2193(c)(4), 95 Stat. 827; July 18, 1984, Pub. L. 98–369, div. B, title III, §2354(a)(4), 98 Stat. 1100, related to coordinated audits, prior to repeal by Pub. L. 100–203, title IV, §4118(m)(1)(A), (2), Dec. 22, 1987, 101 Stat. 1330–157, applicable to audits conducted after Dec. 22, 1987.

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–74, §813(c), in concluding provisions, inserted '', except that in the case of such a person who receives a fee or other income for services performed in connection with any such determination (including a claimant representative, translator, or current or former employee of the Social Security Administration) or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, the amount of such penalty shall be not more than $7,500'' after ''withholding disclosure of such fact''.

2004—Subsec. (a)(1). Pub. L. 108–203, §201(a)(1), substantially rewrote par. (1). Prior to amendment, par. (1) read as follows: ''Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(A) monthly insurance benefits under subchapter II of this chapter,

''(B) benefits or payments under subchapter VIII of this chapter, or

''(C) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.''

Subsec. (a)(3). Pub. L. 108–203, §111(a), added par. (3).

Subsec. (b)(3)(A). Pub. L. 108–203, §201(c)(1), struck out ''charging fraud or false statements'' after ''Federal or State crime''.

Subsec. (c)(1). Pub. L. 108–203, § 201(c)(2), substituted '', representations, or actions'' for ''and representations''.

Subsec. (e)(1)(A). Pub. L. 108–203, § 201(c)(3), substituted ''violation occurred'' for ''statement or representation referred to in subsection (a) of this section was made''.

Subsec. (e)(2)(B). Pub. L. 108–203, § 201(b), substituted ''In the case of any other amounts recovered under this section,'' for ''In the case of amounts recovered arising out of a determination relating to subchapter VIII or XVI of this chapter,''.

1999—Pub. L. 106–169, § 251(b)(6)(A), substituted ''II, VIII'' for ''II'' in section catchline.

Subsec. (a)(1)(B), (C). Pub. L. 106–169, § 251(b)(6)(B), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(2). Pub. L. 106–169, § 251(b)(6)(C), inserted ''or subchapter VIII of this chapter,'' after ''subchapter II of this chapter''.

Subsec. (e)(1)(C)(ii), (iii). Pub. L. 106–169, § 251(b)(6)(D), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(2)(B). Pub. L. 106–169, § 251(b)(6)(E), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

Subsec. (*l*). Pub. L. 106–169, § 251(b)(6)(F), substituted ''subchapter VIII or XVI'' for ''subchapter XVI''.

1994—Subsec. (a)(1). Pub. L. 103–296, § 108(b)(10)(A)(i), (ii), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'', inserted ''recommend that the Secretary'' before ''exclude, as provided'', and struck out before period at end ''and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines''.

Subsecs. (a)(2), (b)(1), (2), (c). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, § 108(b)(10)(A)(i), which directed that this section be amended by substituting ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, was also executed by substituting ''Commissioner's'' for ''Secretary's'' wherever appearing in subsec. (d), to reflect the probable intent of Congress, because Pub. L. 103–296, § 108(b)(10)(A)(i), (iii)(I), substituted ''Commissioner of Social Security'' for ''Secretary'' throughout this section and in subsec. (g) substituted ''Commissioner's'' for ''Secretary's''.

Subsecs. (e), (f). Pub. L. 103–296, § 108(b)(10)(A)(i), which directed amendment of this section by substituting ''Commissioner of Social Security'' for ''Secretary'' each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before ''of the Treasury'' in subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103–296, § 108(b)(10)(A)(iii), substituted ''Commissioner's'' for ''Secretary's'' and ''the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.'' for ''the provisions of section 1320a–7a(h) of this title shall apply.''

Subsecs. (h), (i). Pub. L. 103–296, § 108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, § 108(b)(10)(A)(iv), inserted ''based on a recommendation under subsection (a) of this section'' after ''section 1320a–7 of this title''.

Subsec. (*l*). Pub. L. 103–296, § 206(e)(1), added subsec. (*l*).

Pub. L. 103–296, § 108(b)(10)(A)(i), (v), in subsec. (*l*) as added by Pub. L. 103–296, § 206(e)(1), substituted ''Social Security Administration'' for ''Department of Health and Human Services'' and ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title I, § 111(b), Mar. 2, 2004, 118 Stat. 507, provided that: ''The amendment made by this section [amending this section] shall apply with respect to violations committed after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, § 201(d), Mar. 2, 2004, 118 Stat. 508, provided that: ''The amendments made by this section [amending this section and section 1320a–8a of this title] shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202 [set out as a note under section 902 of this title].'' [The centralized computer file was implemented Nov. 27, 2006, see 72 F.R. 27424.]

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(10)(A) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Pub. L. 103–296, title II, § 206(e)(2), Aug. 15, 1994, 108 Stat. 1515, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

EFFECTIVE DATE

Section applicable to conduct occurring on or after Oct. 1, 1994, see section 206(b)(3) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 1320a–7 of this title.

STUDY ON POSSIBLE MEASURES TO IMPROVE FRAUD PREVENTION AND ADMINISTRATIVE PROCESSING

Pub. L. 106–169, title II, § 210, Dec. 14, 1999, 113 Stat. 1842, provided that:

''(a) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration and the Attorney General, shall conduct a study of possible measures to improve—

''(1) prevention of fraud on the part of individuals entitled to disability benefits under section 223 of the Social Security Act [42 U.S.C. 423] or benefits under section 202 of such Act [42 U.S.C. 402] based on the beneficiary's disability, individuals eligible for supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 et seq.], and applicants for any such benefits; and

''(2) timely processing of reported income changes by individuals receiving such benefits.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report that contains the results of the Commissioner's study under subsection (a). The report shall contain such recommendations for legislative and administrative changes as the Commissioner considers appropriate.''

§ 1320a–8a. Administrative procedure for imposing penalties for false or misleading statements

(a) In general

Any person who—

(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter that the person knows or should know is false or misleading,

(2) makes such a statement or representation for such use with knowing disregard for the truth, or

(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under subchapter II of this chapter or benefits or payments under subchapter XVI of this chapter, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.

(b) Penalty

The penalty described in this subsection is—

(1) nonpayment of benefits under subchapter II of this chapter that would otherwise be payable to the person; and

(2) ineligibility for cash benefits under subchapter XVI of this chapter,

for each month that begins during the applicable period described in subsection (c) of this section.

(c) Duration of penalty

The duration of the applicable period, with respect to a determination by the Commissioner under subsection (a) of this section that a person has engaged in conduct described in subsection (a) of this section, shall be—

(1) six consecutive months, in the case of the first such determination with respect to the person;

(2) twelve consecutive months, in the case of the second such determination with respect to the person; and

(3) twenty-four consecutive months, in the case of the third or subsequent such determination with respect to the person.

(d) Effect on other assistance

A person subject to a period of nonpayment of benefits under subchapter II of this chapter or ineligibility for subchapter XVI of this chapter benefits by reason of this section nevertheless shall be considered to be eligible for and receiving such benefits, to the extent that the person would be receiving or eligible for such benefits but for the imposition of the penalty, for purposes of—

(1) determination of the eligibility of the person for benefits under subchapters XVIII and XIX of this chapter; and

(2) determination of the eligibility or amount of benefits payable under subchapter II or XVI of this chapter to another person.

(e) Definition

In this section, the term ''benefits under subchapter VIII or XVI of this chapter'' includes State supplementary payments made by the Commissioner pursuant to an agreement under section 1010a or 1382e(a) of this title or section 212(b) of Public Law 93–66, as the case may be.

(f) Consultations

The Commissioner of Social Security shall consult with the Inspector General of the Social Security Administration regarding initiating actions under this section.

(Aug. 14, 1935, ch. 531, title XI, § 1129A, as added Pub. L. 106–169, title II, § 207(a), Dec. 14, 1999, 113 Stat. 1837; amended Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–74; Pub. L. 108–203, title II, § 201(a)(2), Mar. 2, 2004, 118 Stat. 508.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–203 substantially rewrote text of subsec. (a). Prior to amendment, text read as follows: ''Any person who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

''(1) monthly insurance benefits under subchapter II of this chapter; or

''(2) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or who makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a penalty described in subsection (b) of this section to be imposed by the Commissioner of Social Security.''

2000—Subsec. (e). Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(B), (D)], inserted ''1010a or'' after ''agreement under section'' and '', as the case may be'' before period at end.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(C)], which directed the amendment of subsec. (e) by inserting ''1010A or'' before ''1382(e)(a)'', could not be executed because ''1382(e)(a)'' does not appear in text.

Pub. L. 106–554, § 1(a)(1) [title V, § 518(b)(2)(A)], which directed the amendment of subsec. (e) by inserting ''VIII or'' after ''benefits under'', was executed by making the insertion after ''benefits under subchapter'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 applicable with respect to violations committed after Nov. 27, 2006, see section 201(d) of Pub. L. 108–203, set out as a note under section 1320a–8 of this title.

EFFECTIVE DATE

Section applicable to statements and representations made on or after Dec. 14, 1999, see section 207(e) of Pub. L. 106–169, set out as an Effective Date of 1999 Amendment note under section 402 of this title.

REGULATIONS

Pub. L. 106–169, title II, § 207(d), Dec. 14, 1999, 113 Stat. 1838, provided that: ''Within 6 months after the date of the enactment of this Act [Dec. 14, 1999], the Commissioner of Social Security shall develop regulations that prescribe the administrative process for making determinations under section 1129A of the Social Security Act [42 U.S.C. 1320a–8a] (including when the applicable period in subsection (c) of such section shall commence), and shall provide guidance on the exercise of discretion as to whether the penalty should be imposed in particular cases.''

§ 1320a–8b. Attempts to interfere with administration of this chapter

Whoever corruptly or by force or threats of force (including any threatening letter or com-

munication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this chapter, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this chapter, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term ''threats of force'' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.

(Aug. 14, 1935, ch. 531, title XI, § 1129B, as added Pub. L. 108–203, title II, § 206, Mar. 2, 2004, 118 Stat. 512.)

§ 1320a–9. Demonstration projects

(a) Authority to approve demonstration projects

(1) In general

The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(2) Limitation

During fiscal years 2012 through 2014, the Secretary may authorize demonstration projects described in paragraph (1), with not more than 10 demonstration projects to be authorized in each fiscal year.

(3) Conditions for State eligibility

For purposes of a new demonstration project under this section that is initially approved in any of fiscal years 2012 through 2014, a State shall be authorized to conduct such demonstration project only if the State satisfies the following conditions:

(A) Identify 1 or more goals

(i) In general

The State shall demonstrate that the demonstration project is designed to accomplish 1 or more of the following goals:

(I) Increase permanency for all infants, children, and youth by reducing the time in foster placements when possible and promoting a successful transition to adulthood for older youth.

(II) Increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improve the safety and well-being of infants, children, and youth.

(III) Prevent child abuse and neglect and the re-entry of infants, children, and youth into foster care.

(ii) Long-term therapeutic family treatment centers; addressing domestic violence

With respect to a demonstration project that is designed to accomplish 1 or more of the goals described in clause (i), the State may elect to establish a program—

(I) to permit foster care maintenance payments to be made under part E of subchapter IV to a long-term therapeutic family treatment center (as described in paragraph (8)(B)) on behalf of a child residing in the center; or

(II) to identify and address domestic violence that endangers children and results in the placement of children in foster care.

(B) Demonstrate readiness

The State shall demonstrate through a narrative description the State's capacity to effectively use the authority to conduct a demonstration project under this section by identifying changes the State has made or plans to make in policies, procedures, or other elements of the State's child welfare program that will enable the State to successfully achieve the goal or goals of the project.

(C) Demonstrate implemented or planned child welfare program improvement policies

(i) In general

The State shall demonstrate that the State has implemented, or plans to implement within 3 years of the date on which the State submits its application to conduct the demonstration project or 2 years after the date on which the Secretary approves such demonstration project (whichever is later), at least 2 of the child welfare program improvement policies described in paragraph (7).

(ii) Previous implementation

For purposes of the requirement described in clause (i), at least 1 of the child welfare program improvement policies to be implemented by the State shall be a policy that the State has not previously implemented as of the date on which the State submits an application to conduct the demonstration project.

(iii) Implementation review

The Secretary may terminate the authority of a State to conduct a demonstration project under this section if, after the 3-year period following approval of the demonstration project, the State has not made significant progress in implementing the child welfare program improvement policies proposed by the State under clause (i).

(4) Limitation on eligibility

The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adop-

tion assistance agreement between a State and an adoptive parent or parents.

(5) Requirement to consider effect of project on terms and conditions of certain court orders

In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of subchapter IV of this chapter, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply and the ability of the State to implement a corrective action plan approved under section 1320a–2a of this title.

(6) Inapplicability of random assignment for control groups as a factor for approval of demonstration projects

For purposes of evaluating an application to conduct a demonstration project under this section, the Secretary shall not take into consideration whether such project requires random assignment of children and families to groups served under the project and to control groups.

(7) Child welfare program improvement policies

For purposes of paragraph (3)(C), the child welfare program improvement policies described in this paragraph are the following:

(A) The establishment of a bill of rights for infants, children, and youth in foster care that is widely shared and clearly outlines protections for infants, children, and youth, such as assuring frequent visits with parents, siblings, and caseworkers, access to attorneys, and participation in age-appropriate extracurricular activities, and procedures for ensuring the protections are provided.

(B) The development and implementation of a plan for meeting the health and mental health needs of infants, children, and youth in foster care that includes ensuring that the provision of health and mental health care is child-specific, comprehensive, appropriate, and consistent (through means such as ensuring the infant, child, or youth has a medical home, regular wellness medical visits, and addressing the issue of trauma, when appropriate).

(C) The inclusion in the State plan under section 671 of this title of an amendment implementing the option under subsection (a)(28) of that section to enter into kinship guardianship assistance agreements.

(D) The election under the State plan under section 671 of this title to define a ''child'' for purposes of the provision of foster care maintenance payments, adoption assistance payments, and kinship guardianship assistance payments, so as to include individuals described in each of subclauses (I), (II), and (III) of section 675(8)(B)(i) of this title who have not attained age 21.

(E) The development and implementation of a plan that ensures congregate care is used appropriately and reduces the placement of children and youth in such care.

(F) Of those infants, children, and youth in out-of-home placements, substantially increasing the number of cases of siblings who are in the same foster care, kinship guardianship, or adoptive placement, above the number of such cases in fiscal year 2008.

(G) The development and implementation of a plan to improve the recruitment and retention of high quality foster family homes trained to help assist infants, children, and youth swiftly secure permanent families. Supports for foster families under such a plan may include increasing maintenance payments to more adequately meet the needs of infants, children, and youth in foster care and expanding training, respite care, and other support services for foster parents.

(H) The establishment of procedures designed to assist youth as they prepare for their transition out of foster care, such as arranging for participation in age-appropriate extra-curricular activities, providing appropriate access to cell phones, computers, and opportunities to obtain a driver's license, providing notification of all sibling placements if siblings are in care and sibling location if siblings are out of care, and providing counseling and financial support for post-secondary education.

(I) The inclusion in the State plan under section 671 of this title of a description of State procedures for—

(i) ensuring that youth in foster care who have attained age 16 are engaged in discussions, including during the development of the transition plans required under paragraphs (1)(D) and (5)(H) of section 675 of this title, that explore whether the youth wishes to reconnect with the youth's biological family, including parents, grandparents, and siblings, and, if so, what skills and strategies the youth will need to successfully and safely reconnect with those family members;

(ii) providing appropriate guidance and services to youth whom[1] affirm an intent to reconnect with biological family members on how to successfully and safely manage such reconnections; and

(iii) making, when appropriate, efforts to include biological family members in such reconnection efforts.

(J) The establishment of one or more of the following programs designed to prevent infants, children, and youth from entering foster care or to provide permanency for infants, children, and youth in foster care:

(i) An intensive family finding program.

(ii) A kinship navigator program.

(iii) A family counseling program, such as a family group decision-making program, and which may include in-home peer support for families.

[1] So in original. Probably should be ''who''.

(iv) A comprehensive family-based substance abuse treatment program.

(v) A program under which special efforts are made to identify and address domestic violence that endangers infants, children, and youth and puts them at risk of entering foster care.

(vi) A mentoring program.

(8) Definitions

In this subsection—

(A) the term ''youth'' means, with respect to a State, an individual who has attained age 12 but has not attained the age at which an individual is no longer considered to be a child under the State plans under parts B and E of subchapter IV, and

(B) the term ''long-term therapeutic family treatment center'' means a State licensed or certified program that enables parents and their children to live together in a safe environment for a period of not less than 6 months and provides, on-site or by referral, substance abuse treatment services, children's early intervention services, family counseling, legal services, medical care, mental health services, nursery and preschool, parenting skills training, pediatric care, prenatal care, sexual abuse therapy, relapse prevention, transportation, and job or vocational training or classes leading to a secondary school diploma or a certificate of general equivalence.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 622(b)(8) of this title, or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

(1) In general

Subject to paragraph (2), a demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.

(2) Termination of authority

In no event shall a demonstration project under this section be conducted after September 30, 2019.

(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project;

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design;

(7) an accounting of any additional Federal, State, and local investments made, as well as any private investments made in coordination with the State, during the 2 fiscal years preceding the application to provide the services described in paragraph (1), and an assurance that the State will provide an accounting of that same spending for each year of an approved demonstration project; and

(8) such additional information as the Secretary may require.

(f) Evaluations

Each State authorized to conduct a demonstration project under this section shall obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

(1) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

(2) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(3) any other information that the Secretary may require.

(g) Reports

(1) State reports; public availability

Each State authorized to conduct a demonstration project under this section shall—

(A) submit periodic reports to the Secretary on the specific programs, activities, and strategies used to improve outcomes for infants, children, youth, and families and the results achieved for infants, children, and youth during the conduct of the demonstration project, including with respect to those infants, children, and youth who are prevented from entering foster care, infants, children, and youth in foster care, and infants, children, and youth who move from foster care to permanent families; and

(B) post a copy of each such report on the website for the State child welfare program

concurrent with the submission of the report to the Secretary.

(2) Reports to Congress

The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) periodic reports based on the State reports submitted under paragraph (1); and

(B) a report based on the results of the State evaluations required under subsection (f) that includes an analysis of the results of such evaluations and such recommendations for administrative or legislative changes as the Secretary determines appropriate.

(h) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

(i) Indian tribes operating IV–E programs considered States

An Indian tribe, tribal organization, or tribal consortium that has elected to operate a program under part E of subchapter IV in accordance with section 679c of this title shall be considered a State for purposes of this section.

(Aug. 14, 1935, ch. 531, title XI, §1130, as added Pub. L. 103–432, title II, §208, Oct. 31, 1994, 108 Stat. 4457; amended Pub. L. 105–89, title III, §301(a), (c), Nov. 19, 1997, 111 Stat. 2127, 2128; Pub. L. 108–40, §5, June 30, 2003, 117 Stat. 837; Pub. L. 109–288, §6(f)(8), Sept. 28, 2006, 120 Stat. 1248; Pub. L. 112–34, title II, §201, Sept. 30, 2011, 125 Stat. 378.)

PRIOR PROVISIONS

A prior section 1130 of act Aug. 14, 1935, was classified to section 1320b of this title prior to repeal by Pub. L. 93–647, §3(e)(1), Jan. 4, 1975, 88 Stat. 2349.

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 112–34, §201(1)(A), amended par. (2) generally. Prior to amendment, text read as follows: ''The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2003.''

Subsec. (a)(3). Pub. L. 112–34, §201(1)(B), added par. (3) and struck out former par. (3) which related to certain types of proposals required to be considered.

Subsec. (a)(5). Pub. L. 112–34, §201(1)(C), inserted ''and the ability of the State to implement a corrective action plan approved under section 1320a–2a of this title'' before the period.

Subsec. (a)(6) to (8). Pub. L. 112–34, §201(1)(D), added pars. (6) to (8).

Subsec. (d). Pub. L. 112–34, §201(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''A demonstration project under this section may be conducted for not more than 5 years, unless in the judgment of the Secretary, the demonstration project should be allowed to continue.''

Subsec. (e)(1). Pub. L. 112–34, §201(3)(A), struck out ''(which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups)'' before the semicolon.

Subsec. (e)(7), (8). Pub. L. 112–34, §201(3)(B)–(D), added par. (7) and redesignated former par. (7) as (8).

Subsecs. (f) to (h). Pub. L. 112–34, §201(4), (5), added subsecs. (f) and (g), redesignated former subsec. (g) as (h), and struck out former subsec. (f) which related to evaluation of, and report on, demonstration projects.

Subsec. (i). Pub. L. 112–34, §201(6), added subsec. (i).

2006—Subsec. (b)(1). Pub. L. 109–288 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any provision of section 627 of this title (as in effect before April 1, 1996), section 622(b)(9) of this title (as in effect after such date), or section 679 of this title; or''.

2003—Subsec. (a)(2). Pub. L. 108–40 substituted ''2003'' for ''2002''.

1997—Subsec. (a). Pub. L. 105–89, §301(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 105–89, §301(c), inserted before period at end '', unless in the judgment of the Secretary, the demonstration project should be allowed to continue''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–288 effective Oct. 1, 2006, and applicable to payments under parts B and E of subchapter IV of this chapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109–288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–40 effective July 1, 2003, see section 8 of Pub. L. 108–40, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

CONSTRUCTION OF 1997 AMENDMENT

Pub. L. 105–89, title III, §301(b), Nov. 19, 1997, 111 Stat. 2128, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act [Nov. 19, 1997].''

§ 1320a–10. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided*, *however*, That this section is not intended to alter the holding in Suter v. Artist M.

that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1130A, as added Pub. L. 103–432, title II, § 211(a), Oct. 31, 1994, 108 Stat. 4460.)

EFFECTIVE DATE

Pub. L. 103–432, title II, § 211(b), Oct. 31, 1994, 108 Stat. 4460, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 31, 1994] and to actions brought on or after such date of enactment.''

§ 1320b. Repealed. Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349

Section, act Aug. 14, 1935, ch. 531, title XI, § 1130, as added Oct. 20, 1972, Pub. L. 92–512, title III, § 301(a), 86 Stat. 945; amended July 9, 1973, Pub. L. 93–66, title II, § 221, 87 Stat. 159; Dec. 31, 1973, Pub. L. 93–233, § 18(j), 87 Stat. 970, set out limitations on funds for certain social services.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 303 of this title.

SOCIAL SERVICES REGULATIONS POSTPONED

Pub. L. 93–233, § 12, Dec. 31, 1973, 87 Stat. 959, as amended by Pub. L. 93–647, § 3(g), Jan. 4, 1975, 88 Stat. 2349, provided that:

''(a) Subject to subsection (b), no regulation and no modification of any regulation, promulgated by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter referred to as the 'Secretary') after January 1, 1973, shall be effective for any period which begins prior to October 1, 1975, if (and insofar as) such regulation or modification of a regulation pertains (directly or indirectly) to the provisions of law contained in section 3(a)(4)(A), 402(a)(19)(G), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), or 1603(a)(4)(A) of the Social Security Act [section 303(a)(4)(A), 602(a)(19)(G), 603(a)(3)(A), 803(a)(1)(A), 1203(a)(3)(A), 1353(a)(3)(A), or 1383(a)(4)(A) of this title].

''(b)(1) The provisions of subsection (a) shall not be applicable to any regulation relating to 'scope of programs', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.0 of the regulations (relating to social services) proposed by the Secretary and published in the Federal Register on May 1, 1973. There shall be deleted from the first sentence of subsection (b) of such section 221.0 the phrase 'meets all the applicable requirements of this part and'.

''(2) The provisions of subsection (a) shall not be applicable to any regulation relating to 'limitations on total amount of Federal funds payable to States for services', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.55 of the regulations so proposed and published on May 1, 1973. There shall be deleted from subsection (d)(1) of such section 221.55 the phrase '(as defined under day care services for children)'; and, in lieu of the sentence contained in subsection (d)(5) of such section 221.55, there shall be inserted the following: 'Services provided to a child who is under foster care in a foster family home (as defined in section 408 of the Social Security Act [42 U.S.C. 608]) or in a childcare institution (as defined in such section), or while awaiting placement in such a home or institution, but only if such services are needed by such child because he is under foster care.'.

''(3) The provisions of subsection (a) shall not be applicable to any regulation relating to 'rates and amounts of Federal financial participation for Puerto Rico, the Virgin Islands, and Guam', if such regulation is identical to the provisions of section 221.56 of the regulations so proposed and published on May 1, 1973.

''(4) The provisions of subsection (a) shall not be construed to preclude the Secretary from making any modification in any regulation (described in subsection (a)) if such modification is technically necessary to take account of the enactment of section 301 or 302 of the Social Security Amendments of 1972 [enacting subchapters XVI and VI of this chapter].

''(c) Notwithstanding the provisions of section 553(d) of title 5, United States Code, any regulation described in subsection (b) may become effective upon the date of its publication in the Federal Register.''

Similar provisions were contained in the following prior act: Pub. L. 93–66, title II, § 220, July 9, 1973, 87 Stat. 158.

MODIFICATION OF SOCIAL SERVICES REGULATIONS

Pub. L. 93–647, § 3(g), Jan. 4, 1975, 88 Stat. 2349, provided in part that: ''Notwithstanding the provisions of section 12(a) of Public Law 93–233 [set out as a note above], the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this part.''

ADJUSTMENT OF ALLOTMENT TO STATE FOR FISCAL YEAR ENDING JUNE 30, 1973

Pub. L. 92–603, title IV, § 403, Oct. 30, 1972, 86 Stat. 1487, provided for the computation of the allotment of each state for the fiscal year ending June 30, 1973.

§ 1320b–1. Notification of Social Security claimant with respect to deferred vested benefits

(a) Whenever—

(1) the Commissioner of Social Security makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 402, 423, or 428 of this title, or

(B) the entitlement of any individual to a lump-sum death payment payable under section 402(i) of this title on account of the death of any person to whom such individual is related by blood, marriage, or adoption,

(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or

(3) the Commissioner of Social Security is requested to do so—

(A) by any individual with respect to whom the Commissioner of Social Security holds information obtained under section 6057 of the Internal Revenue Code of 1986, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

the Commissioner of Social Security shall transmit to the individual referred to in paragraph (1) or (2) or the individual making the request under paragraph (3) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Commissioner of Social Security pursuant to such section 6057 with respect to the individual referred to in paragraph (1), (2), or (3)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 401(g)(1) of this title, expenses incurred in the administration of subsection (a) of this section shall be deemed to be expenses incurred for the administration of subchapter II of this chapter.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Commissioner of Social Security deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, §1131, as added Pub. L. 93–406, title II, §1032, Sept. 2, 1974, 88 Stat. 947; amended Pub. L. 98–369, div. B, title VI, §2663(e)(7), July 18, 1984, 98 Stat. 1168; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–296, title I, §108(b)(11), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(3)(A), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §108(b)(11)(A), (G), in closing provisions substituted ''the Commissioner of Social Security shall transmit'' for ''he shall transmit'', ''paragraph (1) or (2)'' for ''paragraph (1)'', ''paragraph (3)'' for ''paragraph (2)'', ''Commissioner of Social Security pursuant to'' for ''Secretary pursuant to'', and ''paragraph (1), (2), or (3)(A)'' for ''paragraph (1) or (2)(A)''.

Subsec. (a)(1). Pub. L. 103–296, §108(b)(11)(A)–(D), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions, inserted ''or'' at end of subpar. (A), struck out ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or''.

Subsec. (a)(2). Pub. L. 103–296, §108(b)(11)(F), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–296, §108(b)(11)(A), (E), redesignated par. (2) as (3) and substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions and in subpar. (A).

Subsec. (b)(2). Pub. L. 103–296, §108(b)(11)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

1986—Subsec. (a)(2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–369, §2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98–369, §2663(e)(7)(A), substituted a comma for the period after ''section 404(d) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

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.

EFFECTIVE DATE

Section effective Jan. 1, 1978, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of Title 26, Internal Revenue Code.

§1320b–2. Period within which certain claims must be filed

(a) Claims

Notwithstanding any other provision of this chapter (but subject to subsection (b) of this section), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under subchapter I, IV, X, XIV, XVI, XIX, or XX of this chapter, or

(2) under any other provision of this chapter which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this chapter on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) Waiver

The Secretary shall waive the requirement imposed under subsection (a) of this section with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a) of this section. Any such waiver shall be only for such additional period of time as may be necessary to provide the State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

(Aug. 14, 1935, ch. 531, title XI, §1132, as added Pub. L. 96–272, title III, §306(a), June 17, 1980, 94 Stat. 530; amended Pub. L. 97–35, title XXI, §2193(c)(5), Aug. 13, 1981, 95 Stat. 827.)

AMENDMENTS

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''subchapter I, IV, X'' for ''subchapter I, IV, V, X''.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Pub. L. 96–272, title III, §306(b), (c), June 17, 1980, 94 Stat. 530, provided that:

''(b)(1) The amendment made by subsection (a) [enacting this section] shall be effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

''(2) In the case of claims filed prior to the date of enactment of this Act [June 17, 1980] on account of expenditures described in section 1132 of the Social Security Act [42 U.S.C. 1320b–2] made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

''(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

''(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act [42 U.S.C. 1320b–2(b)].

''(c) Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.''

§ 1320b–3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1133, as added Pub. L. 96–272, title III, § 310(a)(1), June 17, 1980, 94 Stat. 532; amended Pub. L. 102–54, § 13(q)(3)(B)(iii), June 13, 1991, 105 Stat. 279; Pub. L. 104–193, title I, § 108(g)(6), Aug. 22, 1996, 110 Stat. 2168.)

References in Text

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans' Benefits.

Amendments

1996—Subsec. (a). Pub. L. 104–193 substituted ''subchapter I, X, XIV, or XVI of this chapter,'' for ''subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter,''.

1991—Subsec. (a)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

Effective Date of 1996 Amendment

Amendment by 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

Effective Date

Pub. L. 96–272, title III, § 310(a)(2), June 17, 1980, 94 Stat. 532, provided that: ''The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [42 U.S.C. 1320b–3(a)] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].''

Continuing Medicaid Eligibility for Certain Recipients of Veterans' Administration Pensions

Pub. L. 96–272, title III, § 310(b)(2), June 17, 1980, 94 Stat. 533, provided that:

''(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [42 U.S.C. 1320b–3] applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has

made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

''(B) Notwithstanding any other provision of law—

''(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [42 U.S.C. 1320b–3] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

''(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

''(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

''(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

''(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1396 et seq., 601 et seq.], and State agencies making supplemental payments pursuant to section 1616 of such Act [42 U.S.C. 1382e] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].''

§ 1320b–4. Nonprofit hospital or critical access hospital philanthropy

For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or critical access hospitals, the following items shall not be deducted from the operating costs of such hospitals or critical access hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

(Aug. 14, 1935, ch. 531, title XI, § 1134, as added Pub. L. 96–499, title IX, § 901(a), Dec. 5, 1980, 94 Stat. 2611; amended Pub. L. 97–35, title XXI, § 2193(c)(6), Aug. 13, 1981, 95 Stat. 827; Pub. L. 97–248, title I, § 137(b)(5), Sept. 3, 1982, 96 Stat. 377; Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iii), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 105–33, title IV, § 4201(c)(1), Aug. 5, 1997, 111 Stat. 373.)

AMENDMENTS

1997—Pub. L. 105–33 substituted ''critical access'' for ''rural primary care'' in two places in introductory provisions.

1989—Pub. L. 101–239 substituted ''hospitals or rural primary care hospitals'' for ''hospitals'' in two places in introductory provisions.

1982—Par. (4). Pub. L. 97–248 substituted ''sale'' for ''scale''.

1981—Pub. L. 97–35 substituted ''subchapters XVIII and'' for ''subchapters V, XVIII, and'' in provision preceding par. (1).

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 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Pub. L. 96–499, title IX, § 901(b), Dec. 5, 1980, 94 Stat. 2611, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].''

§ 1320b–5. Authority to waive requirements during national emergencies

(a) Purpose

The purpose of this section is to enable the Secretary to ensure to the maximum extent feasible, in any emergency area and during an emergency period (as defined in subsection (g)(1) of this section)—

(1) that sufficient health care items and services are available to meet the needs of individuals in such area enrolled in the programs under subchapters XVIII, XIX, and XXI of this chapter; and

(2) that health care providers (as defined in subsection (g)(2) of this section) that furnish such items and services in good faith, but that are unable to comply with one or more requirements described in subsection (b) of this section, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

(b) Secretarial authority

To the extent necessary to accomplish the purpose specified in subsection (a) of this section, the Secretary is authorized, subject to the provisions of this section, to temporarily waive or modify the application of, with respect to health care items and services furnished by a health care provider (or classes of health care providers) in any emergency area (or portion of such an area) during any portion of an emergency period, the requirements of subchapters XVIII, XIX, or XXI of this chapter, or any regulation thereunder (and the requirements of this subchapter other than this section, and regulations thereunder, insofar as they relate to such subchapters), pertaining to—

(1)(A) conditions of participation or other certification requirements for an individual health care provider or types of providers,

(B) program participation and similar requirements for an individual health care provider or types of providers, and

(C) pre-approval requirements;

(2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area;

(3) actions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for—

(A) a transfer of an individual who has not been stabilized in violation of subsection (c) of such section if the transfer is necessitated by the circumstances of the declared emergency in the emergency area during the emergency period; or

(B) the direction or relocation of an individual to receive medical screening in an alternative location—

(i) pursuant to an appropriate State emergency preparedness plan; or

(ii) in the case of a public health emergency described in subsection (g)(1)(B) that involves a pandemic infectious disease, pursuant to a State pandemic preparedness plan or a plan referred to in clause (i), whichever is applicable in the State;

(4) sanctions under section 1395nn(g) of this title (relating to limitations on physician referral);

(5) deadlines and timetables for performance of required activities, except that such deadlines and timetables may only be modified, not waived;

(6) limitations on payments under section 1395w–21(i) of this title for health care items and services furnished to individuals enrolled in a Medicare+Choice plan by health care professionals or facilities not included under such plan; and

(7) sanctions and penalties that arise from noncompliance with the following requirements (as promulgated under the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note)—[1]

(A) section 164.510 of title 45, Code of Federal Regulations, relating to—

(i) requirements to obtain a patient's agreement to speak with family members or friends; and

(ii) the requirement to honor a request to opt out of the facility directory;

(B) section 164.520 of such title, relating to the requirement to distribute a notice; or

(C) section 164.522 of such title, relating to—

(i) the patient's right to request privacy restrictions; and

(ii) the patient's right to request confidential communications.

Insofar as the Secretary exercises authority under paragraph (6) with respect to individuals enrolled in a Medicare+Choice plan, to the extent possible given the circumstances, the Secretary shall reconcile payments made on behalf of such enrollees to ensure that the enrollees do not pay more than would be required had they received services from providers within the network of the plan and may reconcile payments to the organization offering the plan to ensure that such organization pays for services for which payment is included in the capitation payment it receives under part C of subchapter XVIII of this chapter. A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider. If a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious

[1] So in original. A second closing parenthesis probably should precede the dash.

disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accordance with subsection (e) as such subsection applies to public health emergencies.

(c) Authority for retroactive waiver

A waiver or modification of requirements pursuant to this section may, at the Secretary's discretion, be made retroactive to the beginning of the emergency period or any subsequent date in such period specified by the Secretary.

(d) Certification to Congress

The Secretary shall provide a certification and advance written notice to the Congress at least two days before exercising the authority under this section with respect to an emergency area. Such a certification and notice shall include—

(1) a description of—

(A) the specific provisions that will be waived or modified;

(B) the health care providers to whom the waiver or modification will apply;

(C) the geographic area in which the waiver or modification will apply; and

(D) the period of time for which the waiver or modification will be in effect; and

(2) a certification that the waiver or modification is necessary to carry out the purpose specified in subsection (a) of this section.

(e) Duration of waiver

(1) In general

A waiver or modification of requirements pursuant to this section terminates upon—

(A) the termination of the applicable declaration of emergency or disaster described in subsection (g)(1)(A) of this section;

(B) the termination of the applicable declaration of public health emergency described in subsection (g)(1)(B) of this section; or

(C) subject to paragraph (2), the termination of a period of 60 days from the date the waiver or modification is first published (or, if applicable, the date of extension of the waiver or modification under paragraph (2)).

(2) Extension of 60-day periods

The Secretary may, by notice, provide for an extension of a 60-day period described in paragraph (1)(C) (or an additional period provided under this paragraph) for additional period or periods (not to exceed, except as subsequently provided under this paragraph, 60 days each), but any such extension shall not affect or prevent the termination of a waiver or modification under subparagraph (A) or (B) of paragraph (1).

(f) Report to Congress

Within one year after the end of the emergency period in an emergency area in which the Secretary exercised the authority provided under this section, the Secretary shall report to the Congress regarding the approaches used to accomplish the purposes described in subsection (a) of this section, including an evaluation of such approaches and recommendations for improved approaches should the need for such emergency authority arise in the future.

(g) Definitions

For purposes of this section:

(1) Emergency area; emergency period

An ''emergency area'' is a geographical area in which, and an ''emergency period'' is the period during which, there exists—

(A) an emergency or disaster declared by the President pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] or the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; and

(B) a public health emergency declared by the Secretary pursuant to section 247d of this title.

(2) Health care provider

The term ''health care provider'' means any entity that furnishes health care items or services, and includes a hospital or other provider of services, a physician or other health care practitioner or professional, a health care facility, or a supplier of health care items or services.

(Aug. 14, 1935, ch. 531, title XI, §1135, as added Pub. L. 107–188, title I, §143(a), June 12, 2002, 116 Stat. 627; amended Pub. L. 108–276, §9, July 21, 2004, 118 Stat. 863; Pub. L. 109–417, title III, §302(b)(1), Dec. 19, 2006, 120 Stat. 2855.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(7), is section 264(c) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

The National Emergencies Act, referred to in subsec. (g)(1)(A), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(1)(A), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

PRIOR PROVISIONS

A prior section 1320b–5, act Aug. 14, 1935, ch. 531, title XI, §1135, as added Pub. L. 97–35, title XXI, §2173(c), Aug. 13, 1981, 95 Stat. 809; amended Pub. L. 97–248, title I, §101(b)(3), Sept. 3, 1982, 96 Stat. 335; Pub. L. 99–509, title IX, §9343(f), Oct. 21, 1986, 100 Stat. 2041; Pub. L. 100–203, title IV, §4068(b), Dec. 22, 1987, 101 Stat. 1330–114; Pub. L. 100–360, title IV, §411(g)(6), July 1, 1988, 102 Stat. 785; Pub. L. 103–432, title I, §147(c)(2), Oct. 31, 1994, 108 Stat. 4429, related to development of model prospective rate methodology, prior to repeal by Pub. L. 106–113, div. B, §1000(a)(6) [title III, §321(*l*)], Nov. 29, 1999, 113 Stat. 1536, 1501A–368, effective Nov. 29, 1999.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–417, §302(b)(1)(B), (C), in concluding provisions, substituted ''and, except in the case of a waiver or modification to which the fifth sentence of this subsection applies, shall be limited to'' for ''and shall be limited to'' and inserted at end ''If a public health emergency described in subsection (g)(1)(B) involves a pandemic infectious disease (such as pandemic influenza), the duration of a waiver or modification under paragraph (3) shall be determined in accord-

ance with subsection (e) as such subsection applies to public health emergencies.''

Subsec. (b)(3)(B). Pub. L. 109–417, §302(b)(1)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the direction or relocation of an individual to receive medical screening in an alternate location pursuant to an appropriate State emergency preparedness plan;''.

2004—Subsec. (b). Pub. L. 108–276, §9(5), inserted at end of concluding provisions: ''A waiver or modification provided for under paragraph (3) or (7) shall only be in effect if such actions are taken in a manner that does not discriminate among individuals on the basis of their source of payment or of their ability to pay, and shall be limited to a 72-hour period beginning upon implementation of a hospital disaster protocol. A waiver or modification under such paragraph (7) shall be withdrawn after such period and the provider shall comply with the requirements under such paragraph for any patient still under the care of the provider.''

Subsec. (b)(3). Pub. L. 108–276, §9(1), added par. (3) and struck out former par. (3) which read as follows: ''sanctions under section 1395dd of this title (relating to examination and treatment for emergency medical conditions and women in labor) for a transfer of an individual who has not been stabilized in violation of subsection (c) of this section of such section if the transfer arises out of the circumstances of the emergency;''.

Subsec. (b)(7). Pub. L. 108–276, §9(2)–(4), added par. (7).

CHANGE OF NAME

References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201 of Pub. L. 108–173, set out as a note under section 1395w–21 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–417, title III, §302(b)(2), Dec. 19, 2006, 120 Stat. 2856, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 2006] and shall apply to public health emergencies declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) on or after such date.''

EFFECTIVE DATE

Pub. L. 107–188, title I, §143(b), June 12, 2002, 116 Stat. 629, provided that: ''The amendment made by subsection (a) [enacting this section] shall be effective on and after September 11, 2001.''

§ 1320b–6. Exclusion of representatives and health care providers convicted of violations from participation in social security programs

(a) In general

The Commissioner of Social Security shall exclude from participation in the social security programs any representative or health care provider—

(1) who is convicted of a violation of section 408 or 1383a of this title;

(2) who is convicted of any violation under title 18 relating to an initial application for or continuing entitlement to, or amount of, benefits under subchapter II of this chapter, or an initial application for or continuing eligibility for, or amount of, benefits under subchapter XVI of this chapter; or

(3) who the Commissioner determines has committed an offense described in section 1320a–8(a)(1) of this title.

(b) Notice, effective date, and period of exclusion

(1) An exclusion under this section shall be effective at such time, for such period, and upon such reasonable notice to the public and to the individual excluded as may be specified in regulations consistent with paragraph (2).

(2) Such an exclusion shall be effective with respect to services furnished to any individual on or after the effective date of the exclusion. Nothing in this section may be construed to preclude, in determining disability under subchapter II of this chapter or subchapter XVI of this chapter, consideration of any medical evidence derived from services provided by a health care provider before the effective date of the exclusion of the health care provider under this section.

(3)(A) The Commissioner shall specify, in the notice of exclusion under paragraph (1), the period of the exclusion.

(B) Subject to subparagraph (C), in the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be 5 years, except that the Commissioner may waive the exclusion in the case of an individual who is the sole source of essential services in a community. The Commissioner's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (a) of this section based on a conviction or a determination described in subsection (a)(3) of this section occurring on or after December 14, 1999, if the individual has (before, on, or after December 14, 1999) been convicted, or if such a determination has been made with respect to the individual—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years; or

(ii) on two or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(c) Notice to State agencies

The Commissioner shall promptly notify each appropriate State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title—

(1) of the fact and circumstances of each exclusion effected against an individual under this section; and

(2) of the period (described in subsection (b)(3) of this section) for which the State agency is directed to exclude the individual from participation in the activities of the State agency in the course of its employment.

(d) Notice to State licensing agencies

The Commissioner shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual excluded from participation under this section of the fact and circumstances of the exclusion;

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy; and

(3) request that the State or local agency or authority keep the Commissioner and the Inspector General of the Social Security Administration fully and currently informed with respect to any actions taken in response to the request.

(e) Notice, hearing, and judicial review

(1) Any individual who is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Commissioner to the same extent as is provided in section 405(b) of this title, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(2) The provisions of section 405(h) of this title shall apply with respect to this section to the same extent as it is applicable with respect to subchapter II of this chapter.

(f) Application for termination of exclusion

(1) An individual excluded from participation under this section may apply to the Commissioner, in the manner specified by the Commissioner in regulations and at the end of the minimum period of exclusion provided under subsection (b)(3) of this section and at such other times as the Commissioner may provide, for termination of the exclusion effected under this section.

(2) The Commissioner may terminate the exclusion if the Commissioner determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Commissioner at the time of the exclusion, that—

(A) there is no basis under subsection (a) of this section for a continuation of the exclusion; and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Commissioner shall promptly notify each State agency employed for the purpose of making disability determinations under section 421 or 1383b(a) of this title of the fact and circumstances of each termination of exclusion made under this subsection.

(g) Availability of records of excluded representatives and health care providers

Nothing in this section shall be construed to have the effect of limiting access by any applicant or beneficiary under subchapter II or XVI of this chapter, any State agency acting under section 421 or 1383b(a) of this title, or the Commissioner to records maintained by any representative or health care provider in connection with services provided to the applicant or beneficiary prior to the exclusion of such representative or health care provider under this section.

(h) Reporting requirement

Any representative or health care provider participating in, or seeking to participate in, a social security program shall inform the Commissioner, in such form and manner as the Commissioner shall prescribe by regulation, whether such representative or health care provider has been convicted of a violation described in subsection (a) of this section.

(i) Delegation of authority

The Commissioner may delegate authority granted by this section to the Inspector General.

(j) Definitions

For purposes of this section:

(1) Exclude

The term ''exclude'' from participation means—

(A) in connection with a representative, to prohibit from engaging in representation of an applicant for, or recipient of, benefits, as a representative payee under section 405(j) or section 1383(a)(2)(A)(ii) of this title, or otherwise as a representative, in any hearing or other proceeding relating to entitlement to benefits; and

(B) in connection with a health care provider, to prohibit from providing items or services to an applicant for, or recipient of, benefits for the purpose of assisting such applicant or recipient in demonstrating disability.

(2) Social security program

The term ''social security programs'' means the program providing for monthly insurance benefits under subchapter II of this chapter, and the program providing for monthly supplemental security income benefits to individuals under subchapter XVI of this chapter (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(3) Convicted

An individual is considered to have been ''convicted'' of a violation—

(A) when a judgment of conviction has been entered against the individual by a Federal, State, or local court, except if the judgment of conviction has been set aside or expunged;

(B) when there has been a finding of guilt against the individual by a Federal, State, or local court;

(C) when a plea of guilty or nolo contendere by the individual has been accepted by a Federal, State, or local court; or

(D) when the individual has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(Aug. 14, 1935, ch. 531, title XI, §1136, as added Pub. L. 106–169, title II, §208(a), Dec. 14, 1999, 113 Stat. 1839.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (j)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

PRIOR PROVISIONS

A prior section 1320b–6, act Aug. 14, 1935, ch. 531, title XI, §1136, as added Pub. L. 98–369, div. B, title VI, §2630, July 18, 1984, 98 Stat. 1137; amended Pub. L. 99–514, title XVIII, §1883(c)(2), Oct. 22, 1986, 100 Stat. 2918, related to pilot projects to demonstrate use of integrated service delivery systems for human services programs, prior to repeal by Pub. L. 104–193, title I, §§108(q)(7), 116, Aug. 22, 1996, 110 Stat. 2168, 2181, effective July 1, 1997, with certain transition rules.

EFFECTIVE DATE

Pub. L. 106–169, title II, §208(b), Dec. 14, 1999, 113 Stat. 1842, provided that: ''The amendment made by this section [enacting this section] shall apply with respect to convictions of violations described in paragraphs (1) and (2) of section 1136(a) of the Social Security Act [42 U.S.C. 1320b–6(a)] and determinations described in paragraph (3) of such section occurring on or after the date of the enactment of this Act [Dec. 14, 1999].''

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

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 653a(a)(2)(B) of this title) (including State and local governmental entities and labor organizations) in such State are required, effective September 30, 1988, 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

[1] So in original. Probably should be followed by a comma.

(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 established 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.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service either photostatic or other similar copies of such documents, or information from such documents, as specified by the Immigration and Naturalization Service, for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

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.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added Pub. L. 98–369, div. B, title VI, § 2651(a), July 18, 1984, 98 Stat. 1147; amended Pub. L. 99–509, title IX, § 9101, Oct. 21, 1986, 100 Stat. 1972; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–603, title I, § 121(a)(1), Nov. 6, 1986, 100 Stat. 3384; Pub. L. 100–360, title IV, § 411(k)(15)(A), July 1, 1988, 102 Stat. 799; Pub. L. 103–432, title II, § 231, Oct. 31, 1994, 108 Stat. 4462; Pub. L. 104–193, title I, § 108(g)(8), title III, § 313(c), Aug. 22, 1996, 110 Stat. 2168, 2212; Pub. L. 104–208, div. C, title V, § 507(a), Sept. 30, 1996, 110 Stat. 3009–673; Pub. L. 106–169, title IV, § 401(p), Dec. 14, 1999, 113 Stat. 1859; Pub. L. 106–170, title IV, § 405(a), (b), Dec. 17, 1999, 113 Stat. 1911; Pub. L. 110–234, title IV, § 4002(b)(1)(A), (B), (2)(V), May 22, 2008, 122 Stat. 1095–1097; Pub. L. 110–246, § 4(a), title IV, § 4002(b)(1)(A), (B), (2)(V), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 113–79, title IV, § 4030(q), Feb. 7, 2014, 128 Stat. 815.)

REFERENCES IN TEXT

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

The Food and Nutrition Act of 2008, referred to in subsec. (b)(4), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2014—Subsec. (a)(5)(B). Pub. L. 113–79, § 4030(q)(1), which directed substitution of ''supplemental nutrition assistance'' for ''food stamp'', could not be executed because the words ''supplemental nutrition assistance'' already appeared in text after the amendment by Pub. L. 110–246, § 4002(b)(1)(A), (2)(V). See 2008 Amendment note below.

Subsec. (b)(4). Pub. L. 113–79, § 4030(q)(2), which directed substitution of ''supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.)'' for ''food stamp program under the Food Stamp Act of 1977'', was executed by making the substitution for ''supplemental nutrition assistance program under the Food and Nutrition Act of 2008'', to reflect the probable intent of Congress and the amendment by Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(V). See 2008 Amendment note below.

2008—Subsec. (a)(2), (5)(B). Pub. L. 110–246, § 4002(b)(1)(A), (2)(V), substituted ''supplemental nutrition assistance program'' for ''food stamp program''.

Subsec. (b)(4). Pub. L. 110–246, § 4002(b)(1)(A), (B), (2)(V), substituted ''supplemental nutrition assistance program'' for ''food stamp program'' and ''Food and Nutrition Act of 2008'' for ''Food Stamp Act of 1977''.

1999—Subsec. (a)(3). Pub. L. 106–170, § 405(b)(2), inserted ''(as defined in section 653a(a)(2)(B) of this title)'' after ''employers''.

Pub. L. 106–170, § 405(b)(1), which directed striking out ''(as defined in section 653a(a)(2)(B)(iii) of this title)'' after ''labor organizations'', was executed by striking ''(as defined in section 653a(a)(2)(B)(ii) of this title)'' to reflect the probable intent of Congress and the amendment by Pub. L. 106–169.

Pub. L. 106–170, § 405(a), inserted before semicolon at end: '', 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''.

Pub. L. 106–169, substituted ''653a(a)(2)(B)(ii) of this title))'' for ''653a(a)(2)(B)(iii) of this title)''. See Effective Date of 1999 Amendment note below.

1996—Subsec. (a)(3). Pub. L. 104–193, § 313(c), inserted ''(including State and local governmental entities and

labor organizations (as defined in section 653a(a)(2)(B)(iii) of this title)'' after ''employers'' and '', 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'' before semicolon at end.

Subsec. (b)(1). Pub. L. 104–193, §108(g)(8)(A), added par. (1) and struck out former par. (1) which read as follows: ''the aid to families with dependent children program under part A of subchapter IV of this chapter;''.

Subsec. (d)(1)(B). Pub. L. 104–193, §108(g)(8)(B), substituted ''In this subsection, in'' for ''In this subsection—'', struck out ''(ii) in'' before ''the case of the program described in subsection (b)(4)'', redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, realigned margins, and struck out former cl. (i) which read as follows: ''in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,''.

Subsec. (d)(4)(B)(i). Pub. L. 104–208 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,''.

1994—Subsec. (d)(1)(A). Pub. L. 103–432 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not 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.''

1988—Subsec. (f). Pub. L. 100–360 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–603, §121(a)(1)(A), inserted ''which meets the requirements of subsection (d) of this section and'' after ''system'' in introductory text.

Subsec. (a)(2), (4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(4)(C). Pub. L. 99–509 inserted before semicolon at end '', and no State shall be required to use such information to verify the eligibility of all recipients''.

Subsec. (a)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

Subsec. (b). Pub. L. 99–603, §121(a)(1)(B), substituted ''income and eligibility verification system'' for ''income verification system'' in introductory text.

Subsecs. (b)(3), (c)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (d), (e). Pub. L. 99–603, §121(a)(1)(C), added subsecs. (d) and (e).

CHANGE OF NAME

References to the food stamp program established under the Food and Nutrition Act of 2008 [see Effective Date of 1986 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 2012 of Title 7, Agriculture.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(A), (B), (2)(V) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–170, title IV, §405(c), Dec. 17, 1999, 113 Stat. 1911, provided that: ''The amendments made by this section [amending this section] shall apply to wage reports required to be submitted on and after the date of the enactment of this Act [Dec. 17, 1999].''

Amendment by section 401(p) of Pub. L. 106–169 effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 401(q) of Pub. L. 106–169, set out as a note under section 602 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 Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104–193, as amended, set out as an Effective Date note under section 601 of this title.

For effective date of amendment by section 313(c) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–360, title IV, §411(k)(15)(B), July 1, 1988, 102 Stat. 799, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if it were included in the enactment of section 9406 of the Omnibus Budget Reconciliation Act of 1986 [see section 9406(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. 99–603, title I, §121(c)(3), (4), Nov. 6, 1986, 100 Stat. 3391, 3392, provided that:

''(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, section 1436a of this title, and section 1091 of Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

''(4) 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 a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) 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 deter-

mines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (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

''(ii) 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, and

''(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 [42 U.S.C. 601 et seq.].

''(II) The medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

''(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.].

''(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 [now 1986; 26 U.S.C. 3304].

''(V) The food stamp program under the Food Stamp Act of 1977 [now the Food and Nutrition Act of 2008, 7 U.S.C. 2011 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].

''(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.].

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

''(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

''(II) clause (i)(IV), the Secretary of Labor;

''(III) clause (i)(V), the Secretary of Agriculture;

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

''(V) clause (i)(VII), the Secretary of Education.

''(iii) The term 'administering entity' means, with respect to the covered program described in—

''(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

''(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

''(III) clause (i)(VII), an institution of higher education involved.''

EFFECTIVE DATE

Pub. L. 98–369, div. B, title VI, § 2651(*l*), July 18, 1984, 98 Stat. 1151, provided that:

''(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

''(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 1396a of this title and section 2020 of Title 7, 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 1137(c) of the Social Security Act [42 U.S.C. 1320b–7(c)] (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. 106–169 had been enacted after the enactment of Pub. L. 106–170, see section 121(c)(1) of Pub. L. 106–169, set out as a note under section 1396a 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

Pub. L. 99–603, title I, § 121(c)(1), Nov. 6, 1986, 100 Stat. 3391, 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 1137(d) of the Social Security Act [42 U.S.C. 1320b–7(d)(3), (4)(B)(i)] (as amended by 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

Pub. L. 99–603, title I, § 121(d), Nov. 6, 1986, 100 Stat. 3393, 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 Commissioner of Immigration and Naturalization Service concerning the effective-

ness 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 and standards 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—

(A) the hospital or critical access hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the ''Network''); and

(C) the hospital or critical access hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or critical access hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(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).

(C) Any hospital or critical access hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or critical access hospital under this paragraph within 30 days of receiving such application; and

(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.

(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)(i) 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 Secretary determines appropriate for an organization on the basis of its past practices) as meeting the standards to be a qualified organ procurement organization (as so described);

(B) meets the requirements that are applicable under such subchapter for organ procurement agencies;

(C) meets performance-related standards prescribed by the Secretary;

(D) is a member of, and abides by the rules and requirements of, the Network;

(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for

each service area (described in section 273(b)(1)(E)[1] of this title) under paragraph (1)(F).

(Aug. 14, 1935, ch. 531, title XI, § 1138, as added Pub. L. 99–509, title IX, § 9318(a), Oct. 21, 1986, 100 Stat. 2009; amended Pub. L. 100–203, title IV, § 4039(h)(2), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 775; amended Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iv), Dec. 19, 1989, 103 Stat. 2153; Pub. L. 103–432, title I, § 155(a)(1), Oct. 31, 1994, 108 Stat. 4438; Pub. L. 105–33, title IV, §§ 4201(c)(1), 4642, Aug. 5, 1997, 111 Stat. 373, 487.)

REFERENCES IN TEXT

Section 273(b)(1)(E) of this title, referred to in subsec. (b)(2), was redesignated section 273(b)(1)(F) of this title by Pub. L. 106–505, title VII, § 701(c)(1), Nov. 13, 2000, 114 Stat. 2347 and Pub. L. 106–554, § 1(a)(1) [title II, § 219(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–29.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–33, § 4201(c)(1), substituted ''critical access'' for ''rural primary care'' wherever appearing.

Subsec. (b)(1)(A)(ii). Pub. L. 105–33, § 4642, substituted ''2 years (4 years if the Secretary determines appropriate for an organization on the basis of its past practices)'' for ''two years''.

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–432, § 155(a)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) of this section be notified of potential organ donors; and''.

Subsec. (a)(1)(C). Pub. L. 103–432, § 155(a)(1)(B), added subpar. (C).

Subsec. (a)(2). Pub. L. 103–432, § 155(a)(1)(C)(ii), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–432, § 155(a)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, 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.''

Pub. L. 103–432, § 155(a)(1)(C)(i), redesignated par. (2) as (3).

1989—Subsec. (a)(1). Pub. L. 101–239 substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places preceding cl. (i) of subpar. (A).

1988—Subsec. (a)(1)(B). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(B). Pub. L. 100–203, § 4039(h)(2), as added by Pub. L. 100–360, substituted ''in'' for ''In'' at beginning.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4201(c)(1) of 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 1994 AMENDMENT

Pub. L. 103–432, title I, § 155(a)(3), Oct. 31, 1994, 108 Stat. 4439, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to hospitals and rural primary care hospitals participating in the programs under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] beginning January 1, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

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 1, General Provisions.

EFFECTIVE DATE

Pub. L. 99–509, title IX, § 9318(b), Oct. 21, 1986, 100 Stat. 2010, as amended by Pub. L. 100–119, title I, § 107(c), Sept. 29, 1987, 101 Stat. 784; Pub. L. 100–203, title IV, § 4009(g)(1), Dec. 22, 1987, 101 Stat. 1330–58, provided that:

''(1) Section 1138(a) of the Social Security Act [42 U.S.C. 1320b–8(a)] shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act [42 U.S.C. 1395 et seq., 1396 et seq.] as of November 21, 1987.''

''(2) Section 1138(b) of such Act [42 U.S.C. 1320b–8(b)] shall apply to costs of organs procured on or after March 31, 1988.''

[Pub. L. 100–203, title IV, § 4009(g)(2), Dec. 22, 1987, 101 Stat. 1330–58, provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

EXISTING AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Pub. L. 103–432, title I, § 155(a)(2), Oct. 31, 1994, 108 Stat. 4439, provided that: ''Any hospital or rural primary care hospital which has an agreement (as defined in section 1138(a)(3)(A) of the Social Security Act [42 U.S.C. 1320b–8(a)(3)(A)]) with an organ procurement agency other than such hospital's designated organ procurement agency (as defined in section 1138(a)(3)(B) of such Act) on the date of the enactment of this section [Oct. 31, 1994] shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1) [see Effective Date of 1994 Amendment note above], submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1996, and such agreement may continue in effect pending the Secretary's determination with respect to such application.''

§ 1320b–9. Improved access to, and delivery of, health care for Indians under subchapters XIX and XXI

(a) Agreements with States for Medicaid and CHIP outreach on or near reservations to increase the enrollment of Indians in those programs

(1) In general

In order to improve the access of Indians residing on or near a reservation to obtain benefits under the Medicaid and State children's health insurance programs established under subchapters XIX and XXI, the Secretary shall encourage the State to take steps to provide for enrollment on or near the reservation. Such steps may include outreach efforts such as the outstationing of eligibility workers, entering into agreements with the Indian Health Service, Indian Tribes, Tribal Organizations, and Urban Indian Organizations to provide outreach, education regarding eligibility and benefits, enrollment, and translation services when such services are appropriate.

(2) Construction

Nothing in paragraph (1) shall be construed as affecting arrangements entered into between States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations for such Service, Tribes,

[1] See References in Text note below.

or Organizations to conduct administrative activities under such subchapters.

(b) Requirement to facilitate cooperation

The Secretary, acting through the Centers for Medicare & Medicaid Services, shall take such steps as are necessary to facilitate cooperation with, and agreements between, States and the Indian Health Service, Indian Tribes, Tribal Organizations, or Urban Indian Organizations with respect to the provision of health care items and services to Indians under the programs established under subchapter XIX or XXI.

(c) Definition of Indian; Indian Tribe; Indian Health Program; Tribal Organization; Urban Indian Organization

For purposes of this section, subchapter XIX, and subchapter XXI, the terms ''Indian'', ''Indian Tribe'', ''Indian Health Program'', ''Tribal Organization'', and ''Urban Indian Organization'' have the meanings given those terms in section 1603 of title 25.

(Aug. 14, 1935, ch. 531, title XI, § 1139, as added Pub. L. 100–203, title IX, § 9136, Dec. 22, 1987, 101 Stat. 1330–316; amended Pub. L. 100–647, title VIII, § 8201, Nov. 10, 1988, 102 Stat. 3798; Pub. L. 101–45, title IV, § 409, June 30, 1989, 103 Stat. 130; Pub. L. 101–239, title VI, § 6221, Dec. 19, 1989, 103 Stat. 2255; Pub. L. 101–508, title IV, § 4207(k)(6), formerly § 4027(k)(6), title V, § 5057, Nov. 5, 1990, 104 Stat. 1388–125, 1388–230; Pub. L. 103–432, title I, § 160(d)(4), title II, § 264(d), Oct. 31, 1994, 108 Stat. 4444, 4468; Pub. L. 111–3, title II, § 202(a), Feb. 4, 2009, 123 Stat. 39; Pub. L. 111–148, title II, § 2901(d), Mar. 23, 2010, 124 Stat. 333.)

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–148 substituted ''For purposes of this section, subchapter XIX, and subchapter XXI'' for ''In this section''.

2009—Pub. L. 111–3 amended section generally. Prior to amendment, section related to the National Commission on Children.

1994—Subsec. (d). Pub. L. 103–432, § 264(d), repealed Pub. L. 101–508, § 5057. See 1990 Amendment note below.

1990—Subsec. (d). Pub. L. 101–508, § 5057, which directed amendment of subsec. (d) by substituting ''an interim report no later than September 30, 1990, and a final report no later than March 31, 1991'' for ''an interim report no later than March 31, 1991, and a final report no later than September 30, 1990'', and could not be executed, was repealed by Pub. L. 103–432, § 264(d). See Construction of 1990 Amendment note below.

Pub. L. 101–508, § 4207(k)(6), formerly § 4027(k)(6), as renumbered by Pub. L. 103–432, § 160(d)(4), substituted ''interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth'' for ''interim report no later than March 31, 1991, and a final report no later than September 30, 1990, setting forth''.

1989—Subsec. (d). Pub. L. 101–239, § 6221(1), which directed the substitution of ''March 31, 1990'' for ''September 30, 1988'' and ''March 31, 1991'' for ''March 31, 1990 [1989]'', could only be executed in part by substituting ''March 31, 1991'' for ''March 30, 1990'' in view of amendment by Pub. L. 100–647. See 1990 Amendment note above.

Subsec. (e)(1)(A), (4)(B). Pub. L. 101–239, § 6221(2), substituted ''March 31, 1991'' for ''September 30, 1990''.

Subsec. (f). Pub. L. 101–45 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5.

''(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.''

Subsec. (j). Pub. L. 101–239, § 6221(3), substituted ''through fiscal year 1991, such sums'' for ''such sums''.

Subsecs. (k), (*l*). Pub. L. 101–239, § 6221(4), added subsecs. (k) and (*l*).

1988—Subsec. (d). Pub. L. 100–647, § 8201(1), (2), substituted ''March 31, 1990'' for ''September 30, 1988'' and ''September 30, 1990'' for ''March 31, 1989'' in introductory provisions.

Subsec. (e)(1)(A), (4)(B). Pub. L. 100–647, § 8201(3), (4), substituted ''September 30, 1990'' for ''March 31, 1989''.

Subsec. (j). Pub. L. 100–647, § 8201(5), inserted ''for each of fiscal years 1989 and 1990'' before period at end.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as an Effective Date note under section 1396 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–432, title II, § 264(h), Oct. 31, 1994, 108 Stat. 4469, provided that: ''Each amendment made by this section [amending this section and sections 602, 1382a, and 1383 of this title] shall take effect as if included in the provision of OBRA–1990 [Pub. L. 101–508] to which the amendment relates at the time such provision became law.''

CONSTRUCTION OF 1990 AMENDMENT

Pub. L. 103–432, title II, § 264(d), Oct. 31, 1994, 108 Stat. 4468, provided that: ''Section 5057 of OBRA–1990 [Pub. L. 101–508, amending this section], and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act [42 U.S.C. 1320b–9(d)] shall be applied and administered as if such section 5057 had never been enacted.''

§ 1320b–9a. Child health quality measures

(a) Development of an initial core set of health care quality measures for children enrolled in Medicaid or CHIP

(1) In general

Not later than January 1, 2010, the Secretary shall identify and publish for general comment an initial, recommended core set of child health quality measures for use by State programs administered under subchapters XIX and XXI, health insurance issuers and managed care entities that enter into contracts with such programs, and providers of items and services under such programs.

(2) Identification of initial core measures

In consultation with the individuals and entities described in subsection (b)(3), the Secretary shall identify existing quality of care measures for children that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time.

(3) Recommendations and dissemination

Based on such existing and identified measures, the Secretary shall publish an initial core set of child health quality measures that includes (but is not limited to) the following:

(A) The duration of children's health insurance coverage over a 12-month time period.

(B) The availability and effectiveness of a full range of—

(i) preventive services, treatments, and services for acute conditions, including services to promote healthy birth, prevent and treat premature birth, and detect the presence or risk of physical or mental conditions that could adversely affect growth and development; and

(ii) treatments to correct or ameliorate the effects of physical and mental conditions, including chronic conditions and, with respect to dental care, conditions requiring the restoration of teeth, relief of pain and infection, and maintenance of dental health, in infants, young children, school-age children, and adolescents.

(C) The availability of care in a range of ambulatory and inpatient health care settings in which such care is furnished.

(D) The types of measures that, taken together, can be used to estimate the overall national quality of health care for children, including children with special needs, and to perform comparative analyses of pediatric health care quality and racial, ethnic, and socioeconomic disparities in child health and health care for children.

(4) Encourage voluntary and standardized reporting

Not later than 2 years after February 4, 2009, the Secretary, in consultation with States, shall develop a standardized format for reporting information and procedures and approaches that encourage States to use the initial core measurement set to voluntarily report information regarding the quality of pediatric health care under subchapters XIX and XXI.

(5) Adoption of best practices in implementing quality programs

The Secretary shall disseminate information to States regarding best practices among States with respect to measuring and reporting on the quality of health care for children, and shall facilitate the adoption of such best practices. In developing best practices approaches, the Secretary shall give particular attention to State measurement techniques that ensure the timeliness and accuracy of provider reporting, encourage provider reporting compliance, encourage successful quality improvement strategies, and improve efficiency in data collection using health information technology.

(6) Reports to Congress

Not later than January 1, 2011, and every 3 years thereafter, the Secretary shall report to Congress on—

(A) the status of the Secretary's efforts to improve—

(i) quality related to the duration and stability of health insurance coverage for children under subchapters XIX and XXI;

(ii) the quality of children's health care under such subchapters, including preventive health services, dental care, health care for acute conditions, chronic health care, and health services to ameliorate the effects of physical and mental conditions and to aid in growth and development of infants, young children, school-age children, and adolescents with special health care needs; and

(iii) the quality of children's health care under such subchapters across the domains of quality, including clinical quality, health care safety, family experience with health care, health care in the most integrated setting, and elimination of racial, ethnic, and socioeconomic disparities in health and health care;

(B) the status of voluntary reporting by States under subchapters XIX and XXI, utilizing the initial core quality measurement set; and

(C) any recommendations for legislative changes needed to improve the quality of care provided to children under subchapters XIX and XXI, including recommendations for quality reporting by States.

(7) Technical assistance

The Secretary shall provide technical assistance to States to assist them in adopting and utilizing core child health quality measures in administering the State plans under subchapters XIX and XXI.

(8) Definition of core set

In this section, the term ''core set'' means a group of valid, reliable, and evidence-based quality measures that, taken together—

(A) provide information regarding the quality of health coverage and health care for children;

(B) address the needs of children throughout the developmental age span; and

(C) allow purchasers, families, and health care providers to understand the quality of care in relation to the preventive needs of children, treatments aimed at managing and resolving acute conditions, and diagnostic and treatment services whose purpose is to correct or ameliorate physical, mental, or developmental conditions that could, if untreated or poorly treated, become chronic.

(b) Advancing and improving pediatric quality measures

(1) Establishment of pediatric quality measures program

Not later than January 1, 2011, the Secretary shall establish a pediatric quality measures program to—

(A) improve and strengthen the initial core child health care quality measures established by the Secretary under subsection (a);

(B) expand on existing pediatric quality measures used by public and private health care purchasers and advance the development of such new and emerging quality measures; and

(C) increase the portfolio of evidence-based, consensus pediatric quality measures available to public and private purchasers of

children's health care services, providers, and consumers.

(2) Evidence-based measures

The measures developed under the pediatric quality measures program shall, at a minimum, be—

(A) evidence-based and, where appropriate, risk adjusted;

(B) designed to identify and eliminate racial and ethnic disparities in child health and the provision of health care;

(C) designed to ensure that the data required for such measures is collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level;

(D) periodically updated; and

(E) responsive to the child health needs, services, and domains of health care quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A).

(3) Process for pediatric quality measures program

In identifying gaps in existing pediatric quality measures and establishing priorities for development and advancement of such measures, the Secretary shall consult with—

(A) States;

(B) pediatricians, children's hospitals, and other primary and specialized pediatric health care professionals (including members of the allied health professions) who specialize in the care and treatment of children, particularly children with special physical, mental, and developmental health care needs;

(C) dental professionals, including pediatric dental professionals;

(D) health care providers that furnish primary health care to children and families who live in urban and rural medically underserved communities or who are members of distinct population sub-groups at heightened risk for poor health outcomes;

(E) national organizations representing children, including children with disabilities and children with chronic conditions;

(F) national organizations representing consumers and purchasers of children's health care;

(G) national organizations and individuals with expertise in pediatric health quality measurement; and

(H) voluntary consensus standards setting organizations and other organizations involved in the advancement of evidence-based measures of health care.

(4) Developing, validating, and testing a portfolio of pediatric quality measures

As part of the program to advance pediatric quality measures, the Secretary shall—

(A) award grants and contracts for the development, testing, and validation of new, emerging, and innovative evidence-based measures for children's health care services across the domains of quality described in clauses (i), (ii), and (iii) of subsection (a)(6)(A); and

(B) award grants and contracts for—

(i) the development of consensus on evidence-based measures for children's health care services;

(ii) the dissemination of such measures to public and private purchasers of health care for children; and

(iii) the updating of such measures as necessary.

(5) Revising, strengthening, and improving initial core measures

Beginning no later than January 1, 2013, and annually thereafter, the Secretary shall publish recommended changes to the core measures described in subsection (a) that shall reflect the testing, validation, and consensus process for the development of pediatric quality measures described in subsection[1] paragraphs (1) through (4).

(6) Definition of pediatric quality measure

In this subsection, the term ''pediatric quality measure'' means a measurement of clinical care that is capable of being examined through the collection and analysis of relevant information, that is developed in order to assess 1 or more aspects of pediatric health care quality in various institutional and ambulatory health care settings, including the structure of the clinical care system, the process of care, the outcome of care, or patient experiences in care.

(7) Construction

Nothing in this section shall be construed as supporting the restriction of coverage, under subchapter XIX or XXI or otherwise, to only those services that are evidence-based.

(c) Annual State reports regarding State-specific quality of care measures applied under Medicaid or CHIP

(1) Annual State reports

Each State with a State plan approved under subchapter XIX or a State child health plan approved under subchapter XXI shall annually report to the Secretary on the—

(A) State-specific child health quality measures applied by the States under such plans, including measures described in subparagraphs (A) and (B) of subsection (a)(6); and

(B) State-specific information on the quality of health care furnished to children under such plans, including information collected through external quality reviews of managed care organizations under section 1396u–2 of this title and benchmark plans under sections 1396u–7 and 1397cc of this title.

(2) Publication

Not later than September 30, 2010, and annually thereafter, the Secretary shall collect, analyze, and make publicly available the information reported by States under paragraph (1).

[1] So in original.

(d) Demonstration projects for improving the quality of children's health care and the use of health information technology

(1) In general

During the period of fiscal years 2009 through 2013, the Secretary shall award not more than 10 grants to States and child health providers to conduct demonstration projects to evaluate promising ideas for improving the quality of children's health care provided under subchapter XIX or XXI, including projects to—

(A) experiment with, and evaluate the use of, new measures of the quality of children's health care under such subchapters (including testing the validity and suitability for reporting of such measures);

(B) promote the use of health information technology in care delivery for children under such subchapters;

(C) evaluate provider-based models which improve the delivery of children's health care services under such subchapters, including care management for children with chronic conditions and the use of evidence-based approaches to improve the effectiveness, safety, and efficiency of health care services for children; or

(D) demonstrate the impact of the model electronic health record format for children developed and disseminated under subsection (f) on improving pediatric health, including the effects of chronic childhood health conditions, and pediatric health care quality as well as reducing health care costs.

(2) Requirements

In awarding grants under this subsection, the Secretary shall ensure that—

(A) only 1 demonstration project funded under a grant awarded under this subsection shall be conducted in a State; and

(B) demonstration projects funded under grants awarded under this subsection shall be conducted evenly between States with large urban areas and States with large rural areas.

(3) Authority for multistate projects

A demonstration project conducted with a grant awarded under this subsection may be conducted on a multistate basis, as needed.

(4) Funding

$20,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

(e) Childhood obesity demonstration project

(1) Authority to conduct demonstration

The Secretary, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project to develop a comprehensive and systematic model for reducing childhood obesity by awarding grants to eligible entities to carry out such project. Such model shall—

(A) identify, through self-assessment, behavioral risk factors for obesity among children;

(B) identify, through self-assessment, needed clinical preventive and screening benefits among those children identified as target individuals on the basis of such risk factors;

(C) provide ongoing support to such target individuals and their families to reduce risk factors and promote the appropriate use of preventive and screening benefits; and

(D) be designed to improve health outcomes, satisfaction, quality of life, and appropriate use of items and services for which medical assistance is available under subchapter XIX or child health assistance is available under subchapter XXI among such target individuals.

(2) Eligibility entities [2]

For purposes of this subsection, an eligible entity is any of the following:

(A) A city, county, or Indian tribe.

(B) A local or tribal educational agency.

(C) An accredited university, college, or community college.

(D) A Federally-qualified health center.

(E) A local health department.

(F) A health care provider.

(G) A community-based organization.

(H) Any other entity determined appropriate by the Secretary, including a consortia [3] or partnership of entities described in any of subparagraphs (A) through (G).

(3) Use of funds

An eligible entity awarded a grant under this subsection shall use the funds made available under the grant to—

(A) carry out community-based activities related to reducing childhood obesity, including by—

(i) forming partnerships with entities, including schools and other facilities providing recreational services, to establish programs for after school and weekend community activities that are designed to reduce childhood obesity;

(ii) forming partnerships with daycare facilities to establish programs that promote healthy eating behaviors and physical activity; and

(iii) developing and evaluating community educational activities targeting good nutrition and promoting healthy eating behaviors;

(B) carry out age-appropriate school-based activities that are designed to reduce childhood obesity, including by—

(i) developing and testing educational curricula and intervention programs designed to promote healthy eating behaviors and habits in youth, which may include—

(I) after hours physical activity programs; and

(II) science-based interventions with multiple components to prevent eating disorders including nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem develop-

[2] So in original. Probably should be ''Eligible entities''.

[3] So in original. Probably should be ''consortium''.

ment, and learning life skills (such as stress management, communication skills, problemsolving and decision-making skills), as well as consideration of cultural and developmental issues, and the role of family, school, and community;

(ii) providing education and training to educational professionals regarding how to promote a healthy lifestyle and a healthy school environment for children;

(iii) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors and physical activity; and

(iv) planning and implementing healthy lifestyle classes or programs for parents or guardians, with an emphasis on healthy eating behaviors and physical activity for children;

(C) carry out educational, counseling, promotional, and training activities through the local health care delivery systems including by—

(i) promoting healthy eating behaviors and physical activity services to treat or prevent eating disorders, being overweight, and obesity;

(ii) providing patient education and counseling to increase physical activity and promote healthy eating behaviors;

(iii) training health professionals on how to identify and treat obese and overweight individuals which may include nutrition and physical activity counseling; and

(iv) providing community education by a health professional on good nutrition and physical activity to develop a better understanding of the relationship between diet, physical activity, and eating disorders, obesity, or being overweight; and

(D) provide, through qualified health professionals, training and supervision for community health workers to—

(i) educate families regarding the relationship between nutrition, eating habits, physical activity, and obesity;

(ii) educate families about effective strategies to improve nutrition, establish healthy eating patterns, and establish appropriate levels of physical activity; and

(iii) educate and guide parents regarding the ability to model and communicate positive health behaviors.

(4) Priority

In awarding grants under paragraph (1), the Secretary shall give priority to awarding grants to eligible entities—

(A) that demonstrate that they have previously applied successfully for funds to carry out activities that seek to promote individual and community health and to prevent the incidence of chronic disease and that can cite published and peer-reviewed research demonstrating that the activities that the entities propose to carry out with funds made available under the grant are effective;

(B) that will carry out programs or activities that seek to accomplish a goal or goals set by the State in the Healthy People 2010 plan of the State;

(C) that provide non-Federal contributions, either in cash or in-kind, to the costs of funding activities under the grants;

(D) that develop comprehensive plans that include a strategy for extending program activities developed under grants in the years following the fiscal years for which they receive grants under this subsection;

(E) located in communities that are medically underserved, as determined by the Secretary;

(F) located in areas in which the average poverty rate is at least 150 percent or higher of the average poverty rate in the State involved, as determined by the Secretary; and

(G) that submit plans that exhibit multisectoral, cooperative conduct that includes the involvement of a broad range of stakeholders, including—

(i) community-based organizations;

(ii) local governments;

(iii) local educational agencies;

(iv) the private sector;

(v) State or local departments of health;

(vi) accredited colleges, universities, and community colleges;

(vii) health care providers;

(viii) State and local departments of transportation and city planning; and

(ix) other entities determined appropriate by the Secretary.

(5) Program design

(A) Initial design

Not later than 1 year after February 4, 2009, the Secretary shall design the demonstration project. The demonstration should draw upon promising, innovative models and incentives to reduce behavioral risk factors. The Administrator of the Centers for Medicare & Medicaid Services shall consult with the Director of the Centers for Disease Control and Prevention, the Director of the Office of Minority Health, the heads of other agencies in the Department of Health and Human Services, and such professional organizations, as the Secretary determines to be appropriate, on the design, conduct, and evaluation of the demonstration.

(B) Number and project areas

Not later than 2 years after February 4, 2009, the Secretary shall award 1 grant that is specifically designed to determine whether programs similar to programs to be conducted by other grantees under this subsection should be implemented with respect to the general population of children who are eligible for child health assistance under State child health plans under subchapter XXI in order to reduce the incidence of childhood obesity among such population.

(6) Report to Congress

Not later than 3 years after the date the Secretary implements the demonstration project under this subsection, the Secretary shall submit to Congress a report that describes the project, evaluates the effectiveness and cost effectiveness of the project, evaluates the ben-

eficiary satisfaction under the project, and includes any such other information as the Secretary determines to be appropriate.

(7) Definitions

In this subsection:

(A) Federally-qualified health center

The term ''Federally-qualified health center'' has the meaning given that term in section 1396d(*l*)(2)(B) of this title.

(B) Indian tribe

The term ''Indian tribe'' has the meaning given that term in section 1603 of title 25.

(C) Self-assessment

The term ''self-assessment'' means a form that—

(i) includes questions regarding—

(I) behavioral risk factors;

(II) needed preventive and screening services; and

(III) target individuals' preferences for receiving follow-up information;

(ii) is assessed using such computer generated assessment programs; and

(iii) allows for the provision of such ongoing support to the individual as the Secretary determines appropriate.

(D) Ongoing support

The term ''ongoing support'' means—

(i) to provide any target individual with information, feedback, health coaching, and recommendations regarding—

(I) the results of a self-assessment given to the individual;

(II) behavior modification based on the self-assessment; and

(III) any need for clinical preventive and screening services or treatment including medical nutrition therapy;

(ii) to provide any target individual with referrals to community resources and programs available to assist the target individual in reducing health risks; and

(iii) to provide the information described in clause (i) to a health care provider, if designated by the target individual to receive such information.

(8) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to carry out this subsection, $25,000,000 for the period of fiscal years 2010 through 2014, and $10,000,000 for the period of fiscal years 2016 and 2017.

(f) Development of model electronic health record format for children enrolled in Medicaid or CHIP

(1) In general

Not later than January 1, 2010, the Secretary shall establish a program to encourage the development and dissemination of a model electronic health record format for children enrolled in the State plan under subchapter XIX or the State child health plan under subchapter XXI that is—

(A) subject to State laws, accessible to parents, caregivers, and other consumers for the sole purpose of demonstrating compliance with school or leisure activity requirements, such as appropriate immunizations or physicals;

(B) designed to allow interoperable exchanges that conform with Federal and State privacy and security requirements;

(C) structured in a manner that permits parents and caregivers to view and understand the extent to which the care their children receive is clinically appropriate and of high quality; and

(D) capable of being incorporated into, and otherwise compatible with, other standards developed for electronic health records.

(2) Funding

$5,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

(g) Study of pediatric health and health care quality measures

(1) In general

Not later than July 1, 2010, the Institute of Medicine shall study and report to Congress on the extent and quality of efforts to measure child health status and the quality of health care for children across the age span and in relation to preventive care, treatments for acute conditions, and treatments aimed at ameliorating or correcting physical, mental, and developmental conditions in children. In conducting such study and preparing such report, the Institute of Medicine shall—

(A) consider all of the major national population-based reporting systems sponsored by the Federal Government that are currently in place, including reporting requirements under Federal grant programs and national population surveys and estimates conducted directly by the Federal Government;

(B) identify the information regarding child health and health care quality that each system is designed to capture and generate, the study and reporting periods covered by each system, and the extent to which the information so generated is made widely available through publication;

(C) identify gaps in knowledge related to children's health status, health disparities among subgroups of children, the effects of social conditions on children's health status and use and effectiveness of health care, and the relationship between child health status and family income, family stability and preservation, and children's school readiness and educational achievement and attainment; and

(D) make recommendations regarding improving and strengthening the timeliness, quality, and public transparency and accessibility of information about child health and health care quality.

(2) Funding

Up to $1,000,000 of the amount appropriated under subsection (i) for a fiscal year shall be used to carry out this subsection.

(h) Rule of construction

Notwithstanding any other provision in this section, no evidence based quality measure de-

veloped, published, or used as a basis of measurement or reporting under this section may be used to establish an irrebuttable presumption regarding either the medical necessity of care or the maximum permissible coverage for any individual child who is eligible for and receiving medical assistance under subchapter XIX or child health assistance under subchapter XXI.

(i) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2009 through 2013, $45,000,000 for the purpose of carrying out this section (other than subsection (e)), and there is appropriated for the period of fiscal years 2016 and 2017, $20,000,000 for the purpose of carrying out this section (other than subsections (e), (f), and (g)). Funds appropriated under this subsection shall remain available until expended.

(Aug. 14, 1935, ch. 531, title XI, § 1139A, as added and amended Pub. L. 111–3, title IV, § 401(a), title V, § 501(g), Feb. 4, 2009, 123 Stat. 72, 88; Pub. L. 111–148, title IV, § 4306, Mar. 23, 2010, 124 Stat. 587; Pub. L. 114–10, title III, § 304, Apr. 16, 2015, 129 Stat. 158.)

AMENDMENTS

2015—Subsec. (e)(8). Pub. L. 114–10, § 304(a), inserted '', and $10,000,000 for the period of fiscal years 2016 and 2017'' after ''2014''.

Subsec. (i). Pub. L. 114–10, § 304(b), inserted '', and there is appropriated for the period of fiscal years 2016 and 2017, $20,000,000 for the purpose of carrying out this section (other than subsections (e), (f), and (g))'' after ''(other than subsection (e))''.

2010—Subsec. (e)(8). Pub. L. 111–148 amended par. (8) generally. Prior to amendment, text read as follows: ''There is authorized to be appropriated to carry out this subsection, $25,000,000 for the period of fiscal years 2009 through 2013.''

2009—Subsec. (a)(3)(B)(ii). Pub. L. 111–3, § 501(g)(1), inserted ''and, with respect to dental care, conditions requiring the restoration of teeth, relief of pain and infection, and maintenance of dental health'' after ''chronic conditions''.

Subsec. (a)(6)(A)(ii). Pub. L. 111–3, § 501(g)(2), inserted ''dental care,'' after ''preventive health services,''.

EFFECTIVE DATE

Section and amendment by Pub. L. 111–3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111–3, set out as a note under section 1396 of this title.

§ 1320b–9b. Adult health quality measures

(a) Development of core set of health care quality measures for adults eligible for benefits under Medicaid

The Secretary shall identify and publish a recommended core set of adult health quality measures for Medicaid eligible adults in the same manner as the Secretary identifies and publishes a core set of child health quality measures under section 1320b–9a of this title, including with respect to identifying and publishing existing adult health quality measures that are in use under public and privately sponsored health care coverage arrangements, or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time, that may be applicable to Medicaid eligible adults.

(b) Deadlines

(1) Recommended measures

Not later than January 1, 2011, the Secretary shall identify and publish for comment a recommended core set of adult health quality measures for Medicaid eligible adults.

(2) Dissemination

Not later than January 1, 2012, the Secretary shall publish an initial core set of adult health quality measures that are applicable to Medicaid eligible adults.

(3) Standardized reporting

Not later than January 1, 2013, the Secretary, in consultation with States, shall develop a standardized format for reporting information based on the initial core set of adult health quality measures and create procedures to encourage States to use such measures to voluntarily report information regarding the quality of health care for Medicaid eligible adults.

(4) Reports to Congress

Not later than January 1, 2014, and every 3 years thereafter, the Secretary shall include in the report to Congress required under section 1320b–9a(a)(6) of this title information similar to the information required under that section with respect to the measures established under this section.

(5) Establishment of Medicaid quality measurement program

(A) In general

Not later than 12 months after the release of the recommended core set of adult health quality measures under paragraph (1))[1], the Secretary shall establish a Medicaid Quality Measurement Program in the same manner as the Secretary establishes the pediatric quality measures program under section 1320b–9a(b) of this title.

(B) Revising, strengthening, and improving initial core measures

Beginning not later than 24 months after the establishment of the Medicaid Quality Measurement Program, and annually thereafter, the Secretary shall publish recommended changes to the initial core set of adult health quality measures that shall reflect the results of the testing, validation, and consensus process for the development of adult health quality measures.

(c) Construction

Nothing in this section shall be construed as supporting the restriction of coverage, under subchapter XIX or XXI or otherwise, to only those services that are evidence-based, or in anyway limiting available services.

(d) Annual State reports regarding State-specific quality of care measures applied under Medicaid

(1) Annual State reports

Each State with a State plan or waiver approved under subchapter XIX shall annually

[1] So in original. The second closing parenthesis probably should not appear.

report (separately or as part of the annual report required under section 1320b–9a(c) of this title), to the Secretary on the—

(A) State-specific adult health quality measures applied by the State under the such[2] plan, including measures described in subsection (a)(5); and

(B) State-specific information on the quality of health care furnished to Medicaid eligible adults under such plan, including information collected through external quality reviews of managed care organizations under section 1396u–2 of this title and benchmark plans under section 1396u–7 of this title.

(2) Publication

Not later than September 30, 2014, and annually thereafter, the Secretary shall collect, analyze, and make publicly available the information reported by States under paragraph (1).

(e) Appropriation

Out of any funds in the Treasury not otherwise appropriated, there is appropriated for each of fiscal years 2010 through 2014, $60,000,000 for the purpose of carrying out this section. Funds appropriated under this subsection shall remain available until expended. Of the funds appropriated under this subsection, not less than $15,000,000 shall be used to carry out section 1320b–9a(b) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1139B, as added Pub. L. 111–148, title II, § 2701, Mar. 23, 2010, 124 Stat. 317; amended Pub. L. 113–93, title II, § 210, Apr. 1, 2014, 128 Stat. 1047.)

AMENDMENTS

2014—Subsec. (b)(5)(A). Pub. L. 113–93, § 210(b), struck out at end ''The aggregate amount awarded by the Secretary for grants and contracts for the development, testing, and validation of emerging and innovative evidence-based measures under such program shall equal the aggregate amount awarded by the Secretary for grants under section 1320b–9a(b)(4)(A) of this title''.

Subsec. (e). Pub. L. 113–93, § 210(a), inserted at end ''Of the funds appropriated under this subsection, not less than $15,000,000 shall be used to carry out section 1320b–9a(b) of this title.''

§ 1320b–10. Prohibitions relating to references to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication (including any Internet or other electronic communication), or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—

(A) the words ''Social Security'', ''Social Security Account'', ''Social Security System'', ''Social Security Administration'', ''Medicare'', ''Centers for Medicare & Medicaid Services'', ''Department of Health and Human Services'', ''Health and Human Services'', ''Supplemental Security Income Program'', ''Medicaid'', ''Death Benefits Update'', ''Federal Benefit Information'', ''Funeral Expenses'', or ''Final Supplemental Plan'', the letters ''SSA'', ''CMS'', ''DHHS'', ''HHS'', or ''SSI'', or any other combination or variation of such words or letters, or

(B) a symbol or emblem of the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card,,[1] the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Centers for Medicare & Medicaid Services, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems,

in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Centers for Medicare & Medicaid Services, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Department of Health and Human Services unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.

(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

[2] So in original.

[1] So in original.

(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

(i) explains that the product or service is available free of charge from the Social Security Administration, and

(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

(B) Subparagraph (A) shall not apply to any offer—

(i) to serve as a claimant representative in connection with a claim arising under subchapter II of this chapter, subchapter VIII of this chapter, or subchapter XVI of this chapter; or

(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under subchapter XVI of this chapter.

(b) Civil penalties

The Commissioner or the Secretary (as applicable) may, pursuant to regulations, impose a civil money penalty not to exceed—

(1) except as provided in paragraph (2), $5,000, or

(2) in the case of a violation consisting of a broadcast or telecast, $25,000,

against any person for each violation by such person of subsection (a) of this section. In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any items referred to in subsection (a)(1) consisting of Internet or other electronic communications, each dissemination, viewing, or accessing of such a communication which contains one or more words, letters, symbols, or emblems in violation of subsection (a) shall represent a separate violation[2] In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.

(c) Application of other law; compromise, recovery, and deposit into Treasury of civil money penalties

(1) The provisions of section 1320a–7a of this title (other than subsections (a), (b), (f), (h), and (i) and the first sentence of subsection (c)) shall apply to civil money penalties under subsection (b) of this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(2) Penalties imposed against a person under subsection (b) of this section may be compromised by the Commissioner or the Secretary (as applicable) and may be recovered in a civil action in the name of the United States brought in the district court of the United States for the district in which the violation occurred or where the person resides, has its principal office, or may be found, as determined by the Commissioner or the Secretary (as applicable). Amounts recovered under this section shall be paid to the Commissioner or the Secretary (as applicable) and shall be deposited as miscellaneous receipts of the Treasury of the United States, except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States to the person against whom the penalty has been imposed.

(d) Enforcement

The preceding provisions of this section may be enforced through the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate).

(Aug. 14, 1935, ch. 531, title XI, §1140, as added Pub. L. 100–360, title IV, §428(a), July 1, 1988, 102 Stat. 815; amended Pub. L. 100–485, title VI, §608(d)(30)(A), Oct. 13, 1988, 102 Stat. 2424; Pub. L. 103–296, title I, §108(b)(12), title III, §§304(b), 312(a)–(j), Aug. 15, 1994, 108 Stat. 1484, 1520, 1526, 1527; Pub. L. 108–173, title IX, §900(e)(1)(B), Dec. 8, 2003, 117 Stat. 2371; Pub. L. 108–203, title II, §§204(a), 207(a), Mar. 2, 2004, 118 Stat. 511, 512; Pub. L. 114–74, title VIII, §814, Nov. 2, 2015, 129 Stat. 604.)

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114–74, §814(a), inserted ''(including any Internet or other electronic communication)'' after ''or other communication'' in introductory provisions.

Subsec. (b). Pub. L. 114–74, §814(b), in concluding provisions, inserted ''In the case of any items referred to in subsection (a)(1) consisting of Internet or other electronic communications, each dissemination, viewing, or accessing of such a communication which contains one or more words, letters, symbols, or emblems in violation of subsection (a) shall represent a separate violation'' after ''represent a separate violation.''

2004—Pub. L. 108–203, §204(a)(2), substituted ''Prohibitions relating to references'' for ''Prohibition of misuse of symbols, emblems, or names in reference'' in section catchline.

Subsec. (a)(1). Pub. L. 108–203, §207(a)(3), which directed the substitution of ''the Centers for Medicare & Medicaid Services,'' for ''the Health Care Financing Administration,'' wherever appearing in concluding provisions, could not be executed because ''the Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, §900(e)(1)(B)(i). See 2003 Amendment note below.

[2] So in original. Probably should be followed by a period.

Subsec. (a)(1)(A). Pub. L. 108–203, § 207(a)(1), which directed the insertion of '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','' and '' 'CMS','' after '' 'HCFA','', could not be executed because of the prior amendment by Pub. L. 108–173, § 900(e)(1)(B)(ii). See 2003 Amendment note below.

Pub. L. 108–203, § 207(a)(1), substituted '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' for ''or 'Medicaid',''.

Subsec. (a)(1)(B). Pub. L. 108–203, § 207(a)(2), which directed the insertion of ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' wherever appearing, could not be executed because ''Health Care Financing Administration,'' did not appear subsequent to amendment by Pub. L. 108–173, § 900(e)(1)(B)(iii). See 2003 Amendment note below.

Subsec. (a)(4). Pub. L. 108–203, § 204(a)(1), added par. (4).

2003—Subsec. (a)(1). Pub. L. 108–173, § 900(e)(1)(B)(i), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places in concluding provisions.

Subsec. (a)(1)(A). Pub. L. 108–173, § 900(e)(1)(B)(ii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' and ''CMS'' for ''HCFA''.

Subsec. (a)(1)(B). Pub. L. 108–173, § 900(e)(1)(B)(iii), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration'' in two places.

1994—Subsec. (a). Pub. L. 103–296, § 312(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (a)(1). Pub. L. 103–296, § 312(c), (d), in closing provisions substituted ''convey, or in a manner which reasonably could be interpreted or construed as conveying,'' for ''convey'' and inserted at end ''The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.''

Subsec. (a)(1)(A). Pub. L. 103–296, § 312(b)(1), substituted ''Administration', 'Department of Health and Human Services', 'Health and Human Services', 'Supplemental Security Income Program', or 'Medicaid', the letters 'SSA', 'HCFA', 'DHHS', 'HHS', or 'SSI','' for ''Administration', the letters 'SSA' or 'HCFA',''.

Subsec. (a)(1)(B). Pub. L. 103–296, § 312(b)(2), substituted ''Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services'' for ''Social Security Administration'' in two places, struck out ''or of the Health Care Financing Administration'' before '', or any other'', and inserted ''or the Medicare card,'' after ''section 405(c)(2)(F) of this title''.

Subsec. (a)(2). Pub. L. 103–296, § 304(b), substituted ''405(c)(2)(F)'' for ''405(c)(2)(E)''.

Subsec. (a)(2)(A), (B). Pub. L. 103–296, § 108(b)(12)(A), in par. (2) as added by Pub. L. 103–296, § 312(a), designated existing provisions as subpar. (A), struck out ''or of the Department of Health and Human Services'' after ''Social Security Administration'', substituted ''Commissioner of Social Security'' for ''Secretary'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 103–296, § 312(e), added par. (3).

Subsec. (b). Pub. L. 103–296, § 312(g), substituted ''The'' for ''(1) Subject to paragraph (2), the'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and in par. (1) substituted ''paragraph (2)'' for ''subparagraph (B)'', and struck out former par. (2) which read as follows: ''The total amount of penalties which may be imposed under paragraph (1) with respect to multiple violations in any one year period consisting of substantially identical communications or productions shall not exceed $100,000.''

Subsec. (b)(1). Pub. L. 103–296, § 312(f) inserted at end ''In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.''

Pub. L. 103–296, § 108(b)(12)(B), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–296, § 312(h), inserted ''and the first sentence of subsection (c)'' after ''and (i)''.

Subsec. (c)(2). Pub. L. 103–296, § 312(i), at end of second sentence substituted comma for period and inserted ''except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.''

Pub. L. 103–296, § 108(b)(12)(C), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 312(j), added subsec. (d).

Pub. L. 103–296, § 108(b)(12)(D), which in subsec. (d) as added by Pub. L. 103–296, § 312(j), directed the substitution of ''the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate)'' for ''the Office of Inspector General of the Department of Health and Human Services'', was executed by making the substitution for ''the Office of the Inspector General of the Department of Health and Human Services'' to reflect the probable intent of Congress.

1988—Subsec. (c)(1). Pub. L. 100–485 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (c), (d), (e), (g), (j), and (k) of section 1320a–7a of this title shall apply with respect to violations under subsection (a) of this section and penalties imposed under subsection (b) of this section in the same manner and to the same extent as such subsections apply with respect to claims in violation of section 1320a–7a of this title and penalties imposed under section 1320a–7a(a) of this title.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title II, § 204(b), Mar. 2, 2004, 118 Stat. 511, provided that: ''The amendments made by this section [amending this section] shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act [Mar. 2, 2004].''

Pub. L. 108–203, title II, § 207(b), Mar. 2, 2004, 118 Stat. 513, provided that: ''The amendments made by this section [amending this section] shall apply to items sent after 180 days after the date of the enactment of this Act [Mar. 2, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(12) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 312(a)–(j) of Pub. L. 103–296 applicable with respect to violations occurring after Mar. 31, 1995, see section 312(m)(1) of Pub. L. 103–296, set out as an Effective Date note under section 333 of Title 31, Money and Finance.

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.

EFFECTIVE DATE

Pub. L. 100–360, title IV, §428(c), July 1, 1988, 102 Stat. 817, provided that: ''The amendments made by this section [enacting this section and amending section 1395ss of this title] shall take effect on the date of the enactment of this Act [July 1, 1988] and shall apply only with respect to violations occurring on or after such date.''

REPORTS ON OPERATION OF THIS SECTION

Pub. L. 103–296, title III, §312(k), Aug. 15, 1994, 108 Stat. 1527, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Commissioner of Social Security shall each submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 3 reports on the operation of section 1140 of the Social Security Act [this section] with respect to the Social Security Administration or the Department of Health and Human Services during the period covered by the report, which shall specify—

''(A) the number of complaints of violations of such section received by the Social Security Administration or the Department of Health and Human Services during the period,

''(B) the number of cases in which the Social Security Administration or the Department, during the period, sent a notice of violation of such section requesting that an individual cease activities in violation of such section,

''(C) the number of cases in which the Social Security Administration or the Department formally proposed a civil money penalty in a demand letter during the period,

''(D) the total amount of civil money penalties assessed by the Social Security Administration or the Department under this section during the period,

''(E) the number of requests for hearings filed during the period by the Social Security Administration or the Department pursuant to sections 1140(c)(1) [subsec. (c)(1) of this section] and 1128A(c)(2) [section 1320a–7a(c)(2) of this title] of the Social Security Act,

''(F) the disposition during the period of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2) of the Social Security Act, and

''(G) the total amount of civil money penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance Trust Fund or the Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period.

''(2) WHEN DUE.—The reports required by paragraph (1) shall be submitted not later than December 1, 1995, not later than December 1, 1997, and not later than December 1, 1999, respectively.''

CONSULTATION BY UNITED STATES POSTAL SERVICE REGARDING PREVENTION OF DECEPTIVE MAILINGS

United States Postal Service to consult and coordinate functions of Secretary of Department of Health and Human Services in administration of this section, see section 4 of Pub. L. 101–524, set out as a Coordination of Functions With Department of Health and Human Services note under section 3001 of Title 39, Postal Service.

§ 1320b–11. Blood donor locator service

(a) In general

The Commissioner of Social Security shall establish and conduct a Blood Donor Locator Service, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1) of this section) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

(b) Provision of address information

Whenever the Commissioner of Social Security receives a request, filed by an authorized person (as defined in subsection (h)(1) of this section), for the mailing address of a donor described in subsection (a) of this section and the Commissioner of Social Security is reasonably satisfied that the requirements of this section have been met with respect to such request, the Commissioner of Social Security shall promptly undertake to provide the requested address information from—

(1) the files and records maintained by the Social Security Administration, and

(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Commissioner of Social Security considers necessary to comply with such request.

(c) Manner and form of requests

A request for address information under this section shall be filed in such manner and form as the Commissioner of Social Security shall by regulation prescribe, shall include the blood donor's social security account number, and shall be accompanied or supported by such documents as the Commissioner of Social Security may determine to be necessary.

(d) Procedures and safeguards

Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

(1) establish and maintain, to the satisfaction of the Commissioner of Social Security, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of address information made by or to it,

(2) establish and maintain, to the satisfaction of the Commissioner of Social Security, a secure area or place in which such address information and all related blood donor records shall be stored,

(3) restrict, to the satisfaction of the Commissioner of Social Security, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

(4) provide such other safeguards which the Commissioner of Social Security determines (and which the Commissioner of Social Secu-

rity prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

(5) furnish a report to the Commissioner of Social Security, at such time and containing such information as the Commissioner of Social Security may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Commissioner of Social Security determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Commissioner of Social Security may, after any proceedings for review established under subsection (f) of this section, take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Commissioner of Social Security determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Commissioner of Social Security or other action with respect to the Commissioner of Social Security shall be made or taken through such authorized person). The Commissioner of Social Security shall destroy all related blood donor records in the possession of the Social Security Administration upon completion of their use in transmitting mailing addresses as required under subsection (a) of this section, so as to make such records undisclosable.

(e) Arrangements with State agencies and authorized persons

The Commissioner of Social Security, in carrying out the Commissioner's duties and functions under this section, shall enter into arrangements—

(1) with State agencies to accept and to transmit to the Commissioner of Social Security requests for address information under this section and to accept and to transmit such information to authorized persons, and

(2) with State agencies and authorized persons otherwise to cooperate with the Commissioner of Social Security in carrying out the purposes of this section.

(f) Procedures for administrative review

The Commissioner of Social Security shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

(g) Unauthorized disclosure of information

Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Commissioner of Social Security, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Definitions

For purposes of this section—

(1) Authorized person

The term ''authorized person'' means—

(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Commissioner of Social Security, provides for—

(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

(iii) counseling services for such individuals who have been found to have such virus.

(2) Related blood donor record

The term ''related blood donor record'' means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

(3) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Aug. 14, 1935, ch. 531, title XI, § 1141, as added Pub. L. 100–647, title VIII, § 8008(b)(1), Nov. 10, 1988, 102 Stat. 3784; amended Pub. L. 103–296, title I, § 108(b)(13), Aug. 15, 1994, 108 Stat. 1484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(2) and (g), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §108(b)(13)(A), (C), substituted ''The Commissioner of Social Security'' for ''The Secretary'' and struck out ''under the direction of the Commissioner of Social Security,'' before ''which shall be used''.

Subsec. (b), (c). Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, §108(b)(13)(D), which directed amendment of par. (6) by substituting ''Social Security Administration'' for ''Department of Health Services'', was executed by substituting ''Social Security Administration'' for ''Department of Health and Human Services'' in closing provisions to reflect the probable intent of Congress.

Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, §108(b)(13)(A), (B), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in introductory provisions.

Subsecs. (f), (g), (h)(1)(B). Pub. L. 103–296, §108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TIME LIMIT FOR ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE

Pub. L. 100–647, title VIII, §8008(b)(2), Nov. 10, 1988, 102 Stat. 3786, provided that: ''The Secretary of Health and Human Services shall establish the Blood Donor Locator Service pursuant to section 1141 of the Social Security Act [42 U.S.C. 1320b–11] not later than 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

§ 1320b–12. Research on outcomes of health care services and procedures

(a) Establishment of program

(1) In general

The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall—

(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(B) assure that the needs and priorities of the program under subchapter XVIII of this chapter are appropriately reflected in the development and periodic review and updating (through the process set forth in section 299b–2[1] of this title) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

(2) Evaluations of alternative services and procedures

In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

(3) Initial guidelines

(A) In carrying out paragraph (1)(B) of this subsection, and section 299b–1(d)[1] of this title, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

(i)(I) account for a significant portion of expenditures under subchapter XVIII of this chapter; and

(II) have a significant variation in the frequency or the type of treatment provided; or

(ii) otherwise meet the needs and priorities of the program under subchapter XVIII of this chapter, as set forth under subsection (b)(3) of this section.

(B)(i) The Secretary shall provide for the use of guidelines developed under subparagrah[2] (A) to improve the quality, effectiveness, and appropriateness of care provided under subchapter XVIII of this chapter. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such subchapter and shall report to the Congress on such determination by not later than January 1, 1993.

(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title); and

(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(b) Priorities

(1) In general

The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported

[1] See References in Text note below.

[2] So in original. Probably should be ''subparagraph''.

under subsection (a) of this section. In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

(A) improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;

(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and

(D) the data necessary for such evaluations are readily available or can readily be developed.

(2) Preliminary assessments

For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—

(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;

(B) uncertainties exist on the effect of utilizing a particular service or procedure; or

(C) inappropriate services and procedures are provided.

(3) Relationship with medicare program

In establishing priorities under paragraph (1) for research and evaluation, and under section 299b–3(a)[1] of this title for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under subchapter XVIII of this chapter, as set forth by the Administrator of the Centers for Medicare & Medicaid Services.

(c) Methodologies and criteria for evaluations

For the purpose of facilitating research under subsection (a) of this section, the Secretary shall—

(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;

(2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions;

(3) conduct and support reviews and evaluations of the existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;

(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;

(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and

(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

(d) Standards for data bases

In carrying out this section, the Secretary shall develop—

(1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status;

(2) common reporting formats and linkages for such data; and

(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.

(e) Dissemination of research findings and guidelines

(1) In general

The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a) of this section, and for the education of providers and others in the application of such research findings and guidelines.

(2) Cooperative educational activities

In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.

(f) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.

(g) Research with respect to dissemination

The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.

(h) Omitted

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) $50,000,000 for fiscal year 1990;

(B) $75,000,000 for fiscal year 1991;
(C) $110,000,000 for fiscal year 1992;
(D) $148,000,000 for fiscal year 1993; and
(E) $185,000,000 for fiscal year 1994.

(2) Specifications

For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title).

(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(3) Allocations

(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

(B) The purposes referred to in subparagraph (A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

(Aug. 14, 1935, ch. 531, title XI, §1142, as added Pub. L. 101–239, title VI, §6103(b)(1), Dec. 19, 1989, 103 Stat. 2195; amended Pub. L. 106–129, §2(b)(2), Dec. 6, 1999, 113 Stat. 1670; Pub. L. 108–173, title IX, §900(e)(1)(C), Dec. 8, 2003, 117 Stat. 2371.)

REFERENCES IN TEXT

Sections 299b–1 to 299b–3 of this title, referred to in subsecs. (a) and (b), were in the original references to sections 912 to 914 of act July 1, 1944, which were omitted in the general amendment of subchapter VII of chapter 6A of this title by Pub. L. 106–129, §2(a), Dec. 6, 1999, 113 Stat. 1653. Section 2(a) of Pub. L. 106–129 enacted new sections 912 to 914 of act July 1, 1944, which are classified to sections 299b–1 to 299b–3, respectively, of this title.

CODIFICATION

Subsec. (h) of this section, which required the Secretary to report biennially to Congress on the progress of the activities under this section during the preceding 2 fiscal years, including the impact of such activities on medical care (particularly medical care for individuals receiving benefits under subchapter XVIII of this chapter), terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 10 on page 94 of House Document No. 103–7.

Another section 1142 of act Aug. 14, 1935, was renumbered section 1143 by Pub. L. 101–508, title V, §5111(a)(1), Nov. 5, 1990, 104 Stat. 1388–272, and is classified to section 1320b–13 of this title.

AMENDMENTS

2003—Subsec. (b)(3). Pub. L. 108–173, §900(e)(1)(C), substituted ''Centers for Medicare & Medicaid Services'' for ''Health Care Financing Administration''.

1999—Subsec. (a)(1). Pub. L. 106–129 substituted ''Director of the Agency for Healthcare Research and Quality'' for ''Administrator for Health Care Policy and Research'' in introductory provisions.

AHCPR STUDY ON EFFECT OF CREDENTIALING OF TECHNOLOGISTS AND SONOGRAPHERS ON QUALITY OF ULTRASOUND

Pub. L. 106–113, div. B, §1000(a)(6) [title II, §229(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–357, provided that:

''(1) STUDY.—The Administrator for Health Care Policy and Research shall provide for a study that, with respect to the provision of ultrasound under the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.], compares differences in quality between ultrasound furnished by individuals who are credentialed by private entities or organizations and ultrasound furnished by those who are not so credentialed. Such study shall examine and evaluate differences in error rates, resulting complications, and patient outcomes as a result of the differences in credentialing. In designing the study, the Administrator shall consult with organizations nationally recognized for their expertise in ultrasound.

''(2) REPORT.—Not later than two years after the date of the enactment of this Act [Nov. 29, 1999], the Administrator shall submit a report to Congress on the study conducted under paragraph (1).''

REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH RELATED DATA

Pub. L. 101–239, title VI, §6103(b)(2), Dec. 19, 1989, 103 Stat. 2198, provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act [42 U.S.C. 1320b–12(d)] (as added by paragraph (1) of this subsection) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).''

§ 1320b–13. Social security account statements

(a) Provision upon request

(1) Beginning not later than October 1, 1990, the Commissioner of Social Security shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the ''statement'').

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Commissioner at the date of the request;

(B) an estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Commissioner on the date of the request;

(C) a separate estimate of the aggregate of the employer, employee, and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Commissioner on the date of the request;

(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual's account together with a description of the benefits payable under the medicare program of subchapter XVIII of this chapter; and

(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 402(k)(5) and 415(a)(7) of this title and an explanation of the maximum potential effects of such provisions on the eligible individual's monthly retirement, survivor, and auxiliary benefits.

(3) For purposes of this section, the term ''eligible individual'' means an individual—

(A) who has a social security account number,

(B) who has attained age 25 or over, and

(C)(i) who has wages or net earnings from self-employment, or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment.

(b) Notice to eligible individuals

The Commissioner shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a) of this section.

(c) Mandatory provision of statements

(1) By not later than September 30, 1995, the Commissioner shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. In fiscal years 1995 through 1999 the Commissioner shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Commissioner determines to be appropriate. The Commissioner shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the Commissioner shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under subchapter II of this chapter and for whom a mailing address can be determined through such methods as the Commissioner determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

(d) Disclosure to governmental employees of effect of noncovered employment

(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) in a position in which service performed by the individual does not constitute ''employment'' as defined in section 410 of this title, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual's employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 415(a)(7) of this title) and the effect on benefit amounts (under section 402(k)(5) of this title) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall be prescribed by the Commissioner of Social Security.

(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.

(Aug. 14, 1935, ch. 531, title XI, § 1143, formerly § 1142, as added Pub. L. 101–239, title X, § 10308, Dec. 19, 1989, 103 Stat. 2485; renumbered § 1143 and amended Pub. L. 101–508, title V, § 5111(a), Nov. 5, 1990, 104 Stat. 1388–272; Pub. L. 105–78, title VI, § 605, Nov. 13, 1997, 111 Stat. 1521; Pub. L. 108–203, title IV, §§ 419(a)–(c), 421, Mar. 2, 2004, 118 Stat. 533–535.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–203, § 421(1), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(2)(A) to (C). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary''.

Subsec. (a)(2)(E). Pub. L. 108–203, § 419(b), added subpar. (E).

Subsec. (a)(3). Pub. L. 108–203, § 419(a)(1), struck out ''who'' after ''an individual'' in introductory provisions.

Subsec. (a)(3)(A), (B). Pub. L. 108–203, § 419(a)(1), inserted ''who'' before ''has''.

Subsec. (a)(3)(C). Pub. L. 108–203, § 419(a)(2), (3), designated existing provisions as cl. (i), inserted ''who'' before ''has wages'', and inserted '', or'' and cl. (ii) before period.

Subsecs. (b), (c). Pub. L. 108–203, § 421(2), substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 108–203, § 419(c), added subsec. (d).

1997—Subsec. (a)(2)(B), (C). Pub. L. 105–78 substituted ''employer, employee,'' for ''employee''.

1990—Subsec. (c)(2). Pub. L. 101–508, § 5111(a)(2), substituted ''an annual'' for ''a biennial''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 419(d), Mar. 2, 2004, 118 Stat. 534, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section] shall apply with respect to social security account statements issued on or after January 1, 2007.''

§ 1320b–14. Outreach efforts to increase awareness of the availability of medicare cost-sharing and subsidies for low-income individuals under subchapter XVIII

(a) Outreach

(1) In general

The Commissioner of Social Security (in this section referred to as the ''Commissioner'') shall conduct outreach efforts to—

(A) identify individuals entitled to benefits under the medicare program under subchapter XVIII of this chapter who may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title[1] for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title; and

(B) notify such individuals of the availability of such medical assistance, program, and subsidies under such sections.

(2) Content of notice

Any notice furnished under paragraph (1) shall state that eligibility for medicare cost-sharing assistance, the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies under section 1395w–114 of this title under such sections is conditioned upon—

(A) the individual providing to the State information about income and resources (in the case of an individual residing in a State that imposes an assets test for eligibility for medicare cost-sharing under the medicaid program); and

(B) meeting the applicable eligibility criteria.

(b) Coordination with States

(1) In general

In conducting the outreach efforts under this section, the Commissioner shall—

(A) furnish the agency of each State responsible for the administration of the medicaid program and any other appropriate State agency with information consisting of the name and address of individuals residing in the State that the Commissioner determines may be eligible for medical assistance for payment of the cost of medicare cost-sharing under the medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title, for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title; and

(B) update any such information not less frequently than once per year.

(2) Information in periodic updates

The periodic updates described in paragraph (1)(B) shall include information on individuals who are or may be eligible for the medical assistance, program, and subsidies described in paragraph (1)(A) because such individuals have experienced reductions in benefits under subchapter II of this chapter.

(c) Assistance with Medicare Savings Program and low-income subsidy program applications

(1) Distribution of applications and information to individuals who are potentially eligible for low-income subsidy program

For each individual who submits an application for low-income subsidies under section 1395w–114 of this title, requests an application for such subsidies, or is otherwise identified as an individual who is potentially eligible for such subsidies, the Commissioner shall do the following:

(A) Provide information describing the low-income subsidy program under section 1395w–114 of this title and the Medicare Savings Program (as defined in paragraph (7)).

(B) Provide an application for enrollment under such low-income subsidy program (if not already received by the Commissioner).

(C) In accordance with paragraph (3), transmit data from such an application for purposes of initiating an application for benefits under the Medicare Savings Program.

(D) Provide information on how the individual may obtain assistance in completing such application and an application under the Medicare Savings Program, including information on how the individual may contact the State health insurance assistance program (SHIP).

(E) Make the application described in subparagraph (B) and the information described in subparagraphs (A) and (D) available at local offices of the Social Security Administration.

(2) Training personnel in explaining benefit programs and assisting in completing LIS application

The Commissioner shall provide training to those employees of the Social Security Administration who are involved in receiving applications for benefits described in paragraph (1)(B) in order that they may promote beneficiary understanding of the low-income subsidy program and the Medicare Savings Program in order to increase participation in these programs. Such employees shall provide assistance in completing an application described in paragraph (1)(B) upon request.

(3) Transmittal of data to States

Beginning on January 1, 2010, with the consent of an individual completing an application for benefits described in paragraph (1)(B), the Commissioner shall electronically transmit to the appropriate State Medicaid agency data from such application, as determined by the Commissioner, which transmittal shall initiate an application of the individual for benefits under the Medicare Savings Program with the State Medicaid agency. In order to ensure that such data transmittal provides effective assistance for purposes of State adjudication of applications for benefits under the Medicare Savings Program, the Commissioner shall consult with the Secretary, after the

[1] So in original. Probably should be followed by a comma.

Secretary has consulted with the States, regarding the content, form, frequency, and manner in which data (on a uniform basis for all States) shall be transmitted under this subparagraph.

(4) Coordination with outreach

The Commissioner shall coordinate outreach activities under this subsection in connection with the low-income subsidy program and the Medicare Savings Program.

(5) Reimbursement of Social Security Administration administrative costs

(A) Initial Medicare Savings Program costs; additional low-income subsidy costs

(i) Initial Medicare Savings Program costs

There are hereby appropriated to the Commissioner to carry out this subsection, out of any funds in the Treasury not otherwise appropriated, $24,100,000. The amount appropriated under ths[2] clause shall be available on October 1, 2008, and shall remain available until expended.

(ii) Additional amount for low-income subsidy activities

There are hereby appropriated to the Commissioner, out of any funds in the Treasury not otherwise appropriated, $24,800,000 for fiscal year 2009 to carry out low-income subsidy activities under section 1395w–114 of this title and the Medicare Savings Program (in accordance with this subsection), to remain available until expended. Such funds shall be in addition to the Social Security Administration's Limitation on Administrative Expenditure appropriations for such fiscal year.

(B) Subsequent funding under agreements

(i) In general

Effective for fiscal years beginning on or after October 1, 2010, the Commissioner and the Secretary shall enter into an agreement which shall provide funding (subject to the amount appropriated under clause (ii)) to cover the administrative costs of the Commissioner's activities under this subsection. Such agreement shall—

(I) provide funds to the Commissioner for the full cost of the Social Security Administration's work related to the Medicare Savings Program required under this section;

(II) provide such funding quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary; and

(III) require an annual accounting and reconciliation of the actual costs incurred and funds provided under this subsection.

(ii) Appropriation

There are hereby appropriated to the Secretary solely for the purpose of providing payments to the Commissioner pursuant to an agreement specified in clause (i) that is in effect, out of any funds in the Treasury not otherwise appropriated, not more than $3,000,000 for fiscal year 2011 and each fiscal year thereafter.

(C) Limitation

In no case shall funds from the Social Security Administration's Limitation on Administrative Expenses be used to carry out activities related to the Medicare Savings Program. For fiscal years beginning on or after October 1, 2010, no such activities shall be undertaken by the Social Security Administration unless the agreement specified in subparagraph (B) is in effect and full funding has been provided to the Commissioner as specified in such subparagraph.

(6) GAO analysis and report

(A) Analysis

The Comptroller General of the United States shall prepare an analysis of the impact of this subsection—

(i) in increasing participation in the Medicare Savings Program, and

(ii) on States and the Social Security Administration.

(B) Report

Not later than January 1, 2012, the Comptroller General shall submit to Congress, the Commissioner, and the Secretary a report on the analysis conducted under subparagraph (A).

(7) Medicare Savings Program defined

For purposes of this subsection, the term ''Medicare Savings Program'' means the program of medical assistance for payment of the cost of medicare cost-sharing under the Medicaid program pursuant to sections 1396a(a)(10)(E) and 1396u–3 of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 106–554, § 1(a)(6) [title IX, § 911(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–583; amended Pub. L. 108–173, title I, § 103(g), Dec. 8, 2003, 117 Stat. 2160; Pub. L. 110–275, title I, § 113(a), July 15, 2008, 122 Stat. 2503.)

PRIOR PROVISIONS

A prior section 1320b–14, act Aug. 14, 1935, ch. 531, title XI, § 1144, as added Pub. L. 103–66, title XIII, § 13581(a), Aug. 10, 1993, 107 Stat. 609; Pub. L. 105–34, title XV, § 1503(e), Aug. 5, 1997, 111 Stat. 1063, related to Medicare and Medicaid Coverage Data Bank, prior to repeal by Pub. L. 104–226, § 1(a), Oct. 2, 1996, 110 Stat. 3033.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–275 added subsec. (c).

2003—Pub. L. 108–173, § 103(g)(1), inserted ''and subsidies for low-income individuals under subchapter XVIII'' after ''cost-sharing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 108–173, § 103(g)(2)(A)(i), inserted ''for the transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies under section 1395w–114 of this title'' before semicolon.

Subsec. (a)(1)(B). Pub. L. 108–173, § 103(g)(2)(A)(ii), inserted '', program, and subsidies'' after ''medical assistance''.

Subsec. (a)(2). Pub. L. 108–173, § 103(g)(2)(B)(i), inserted '', the transitional assistance under section 1395w–141(f) of this title, or premium and cost-sharing subsidies

[2] So in original. Probably should be ''this''.

under section 1395w–114 of this title'' after ''assistance'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 108–173, §103(g)(2)(B)(ii), substituted ''eligibility for medicare cost-sharing under the medicaid program'' for ''such eligibility''.

Subsec. (b)(1)(A). Pub. L. 108–173, §103(g)(3)(A), inserted '', for transitional assistance under section 1395w–141(f) of this title, or for premium and cost-sharing subsidies for low-income individuals under section 1395w–114 of this title'' after ''1396u–3 of this title''.

Subsec. (b)(2). Pub. L. 108–173, §103(g)(3)(B), inserted '', program, and subsidies'' after ''medical assistance''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–275, title I, §113(c), July 15, 2008, 122 Stat. 2506, provided that: ''Except as otherwise provided, the amendments made by this section [amending this section and section 1396u–5 of this title] shall take effect on January 1, 2010.''

EFFECTIVE DATE

Pub. L. 106–554, §1(a)(6) [title IX, §911(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1396d of this title] shall take effect one year after the date of the enactment of this Act [Dec. 21, 2000].''

GAO REPORT

Pub. L. 106–554, §1(a)(6) [title IX, §911(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–584, provided that: ''The Comptroller General of the United States shall conduct a study of the impact of section 1144 of the Social Security Act [42 U.S.C. 1320b–14] (as added by subsection (a)(1)) on the enrollment of individuals for medicare cost-sharing under the medicaid program. Not later than 18 months after the date that the Commissioner of Social Security first conducts outreach under section 1144 of such Act, the Comptroller General shall submit to Congress a report on such study. The report shall include such recommendations for legislative changes as the Comptroller General deems appropriate.''

§ 1320b–15. Protection of social security and medicare trust funds

(a) In general

No officer or employee of the United States shall—

(1) delay the deposit of any amount into (or delay the credit of any amount to) any Federal fund or otherwise vary from the normal terms, procedures, or timing for making such deposits or credits,

(2) refrain from the investment in public debt obligations of amounts in any Federal fund, or

(3) redeem prior to maturity amounts in any Federal fund which are invested in public debt obligations for any purpose other than the payment of benefits or administrative expenses from such Federal fund.

(b) "Public debt obligation" defined

For purposes of this section, the term ''public debt obligation'' means any obligation subject to the public debt limit established under section 3101 of title 31.

(c) "Federal fund" defined

For purposes of this section, the term ''Federal fund'' means—

(1) the Federal Old-Age and Survivors Insurance Trust Fund;

(2) the Federal Disability Insurance Trust Fund;

(3) the Federal Hospital Insurance Trust Fund; and

(4) the Federal Supplementary Medical Insurance Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, §1145, as added Pub. L. 104–121, title I, §107(a), Mar. 29, 1996, 110 Stat. 856.)

EFFECTIVE DATE

Pub. L. 104–121, title I, §107(b), Mar. 29, 1996, 110 Stat. 857, provided that: ''The amendment made by this section [enacting this section] shall take effect on the date of the enactment of this Act [Mar. 29, 1996].''

§ 1320b–16. Public disclosure of certain information on hospital financial interest and referral patterns

The Secretary shall make available to the public, in a form and manner specified by the Secretary, information disclosed to the Secretary pursuant to section 1395cc(a)(1)(S) of this title.

(Aug. 14, 1935, ch. 531, title XI, §1146, as added Pub. L. 105–33, title IV, §4321(c), Aug. 5, 1997, 111 Stat. 395.)

EFFECTIVE DATE

Pub. L. 105–33, title IV, §4321(d)(2), Aug. 5, 1997, 111 Stat. 395, provided that: ''The Secretary of Health and Human Services shall issue regulations by not later than the date which is 1 year after the date of the enactment of this Act [Aug. 5, 1997] to carry out the amendments made by subsections (b) and (c) [enacting this section and amending section 1395cc of this title] and such amendments shall take effect as of such date (on or after the issuance of such regulations) as the Secretary specifies in such regulations.''

§ 1320b–17. Cross-program recovery of overpayments from benefits

(a) In general

Subject to subsection (b) of this section, whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e) of this section, the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

(b) Limitation applicable to current benefits

(1) In general

In carrying out subsection (a) of this section, the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) of this section that is paid when regularly due—

(A) in the case of benefits under subchapter II or VIII of this chapter, by more than 10 percent of the amount of the benefit payable to the person for that month under such subchapter; and

(B) in the case of benefits under subchapter XVI of this chapter, by an amount greater than the lesser of—

(i) the amount of the benefit payable to the person for that month; or

(ii) an amount equal to 10 percent of the person's income for that month (including

such monthly benefit but excluding payments under subchapter II of this chapter when recovery is also made from subchapter II payments and excluding income excluded pursuant to section 1382a(b) of this title).

(2) Exception

Paragraph (1) shall not apply if—

(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

(B) the person so requests.

(c) No effect on eligibility or benefit amount under subchapter VIII or XVI

In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) of this section to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3) of this section) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person's income, shall, as a result of such action—

(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e) of this section; or

(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

(d) Inapplicability of prohibition against assessment and legal process

Section 407 of this title shall not apply to actions taken under the provisions of this section to decrease amounts payable under subchapters II and XVI of this chapter.

(e) Programs described

The programs described in this subsection are the following:

(1) The old-age, survivors, and disability insurance benefits program under subchapter II of this chapter.

(2) The special benefits for certain World War II veterans program under subchapter VIII of this chapter.

(3) The supplemental security income benefits program under subchapter XVI of this chapter (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or section 212(b) of Public Law 93–66).

(Aug. 14, 1935, ch. 531, title XI, § 1147, as added Pub. L. 105–306, § 8(a), Oct. 28, 1998, 112 Stat. 2928; amended Pub. L. 106–169, title II, § 251(b)(7), Dec. 14, 1999, 113 Stat. 1855; Pub. L. 108–203, title II, § 210(a), Mar. 2, 2004, 118 Stat. 516.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(3), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 156, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

2004—Pub. L. 108–203 amended section catchline and text generally, substituting provisions relating to recovery of overpayments from benefits under subchapters II, VIII, and XVI of this chapter, consisting of subsecs. (a) to (e), for provisions relating to recovery of overpayments from benefits under subchapter XVI of this chapter, consisting of subsecs. (a) and (b).

1999—Pub. L. 106–169, § 251(b)(7)(B), substituted ''other'' for ''social security'' in section catchline.

Subsec. (a)(1). Pub. L. 106–169, § 251(b)(7)(A), inserted ''or VIII'' after ''person under subchapter II'' and substituted ''payable under such subchapter'' for ''payable under subchapter II of this chapter''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–203 effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section effective Oct. 28, 1998, and applicable to amounts incorrectly paid which remain outstanding on or after such date, see section 8(c) of Pub. L. 105–306, set out as an Effective Date of 1998 Amendment note under section 404 of this title.

§ 1320b–18. Repealed. Pub. L. 108–203, title II, § 210(b)(3), Mar. 2, 2004, 118 Stat. 517

Section, act Aug. 14, 1935, ch. 531, title XI, § 1147A, as added Pub. L. 106–169, title II, § 251(b)(8), Dec. 14, 1999, 113 Stat. 1856, related to recovery of social security benefit overpayments from subchapter VIII benefits. See section 1320b–17 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 2, 2004, and effective with respect to overpayments under subchapters II, VIII, and XVI of this chapter that are outstanding on or after such date, see section 210(c) of Pub. L. 108–203, set out as an Effective Date of 2004 Amendment note under section 404 of this title.

§ 1320b–19. The Ticket to Work and Self-Sufficiency Program

(a) In general

The Commissioner shall establish a Ticket to Work and Self-Sufficiency Program, under which a disabled beneficiary may use a ticket to work and self-sufficiency issued by the Commissioner in accordance with this section to obtain employment services, vocational rehabilitation services, or other support services from an employment network which is of the beneficiary's choice and which is willing to provide such services to such beneficiary.

(b) Ticket system

(1) Distribution of tickets

The Commissioner may issue a ticket to work and self-sufficiency to disabled beneficiaries for participation in the Program.

(2) Assignment of tickets

A disabled beneficiary holding a ticket to work and self-sufficiency may assign the ticket to any employment network of the beneficiary's choice which is serving under the Program and is willing to accept the assignment.

(3) Ticket terms

A ticket issued under paragraph (1) shall consist of a document which evidences the

Commissioner's agreement to pay (as provided in paragraph (4)) an employment network, which is serving under the Program and to which such ticket is assigned by the beneficiary, for such employment services, vocational rehabilitation services, and other support services as the employment network may provide to the beneficiary.

(4) Payments to employment networks

The Commissioner shall pay an employment network under the Program in accordance with the outcome payment system under subsection (h)(2) of this section or under the outcome-milestone payment system under subsection (h)(3) of this section (whichever is elected pursuant to subsection (h)(1) of this section). An employment network may not request or receive compensation for such services from the beneficiary.

(c) State participation

(1) In general

Each State agency administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) may elect to participate in the Program as an employment network with respect to a disabled beneficiary. If the State agency does elect to participate in the Program, the State agency also shall elect to be paid under the outcome payment system or the outcome-milestone payment system in accordance with subsection (h)(1) of this section. With respect to a disabled beneficiary that the State agency does not elect to have participate in the Program, the State agency shall be paid for services provided to that beneficiary under the system for payment applicable under section 422(d) of this title and subsections (d) and (e) of section 1382d of this title. The Commissioner shall provide for periodic opportunities for exercising such elections.

(2) Effect of participation by State agency

(A) State agencies participating

In any case in which a State agency described in paragraph (1) elects under that paragraph to participate in the Program, the employment services, vocational rehabilitation services, and other support services which, upon assignment of tickets to work and self-sufficiency, are provided to disabled beneficiaries by the State agency acting as an employment network shall be governed by plans for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.).

(B) State agencies administering maternal and child health services programs

Subparagraph (A) shall not apply with respect to any State agency administering a program under subchapter V of this chapter.

(3) Agreements between State agencies and employment networks

State agencies and employment networks shall enter into agreements regarding the conditions under which services will be provided when an individual is referred by an employment network to a State agency for services. The Commissioner shall establish by regulations the timeframe within which such agreements must be entered into and the mechanisms for dispute resolution between State agencies and employment networks with respect to such agreements.

(d) Responsibilities of the Commissioner

(1) Selection and qualifications of program managers

The Commissioner shall enter into agreements with 1 or more organizations in the private or public sector for service as a program manager to assist the Commissioner in administering the Program. Any such program manager shall be selected by means of a competitive bidding process, from among organizations in the private or public sector with available expertise and experience in the field of vocational rehabilitation or employment services.

(2) Tenure, renewal, and early termination

Each agreement entered into under paragraph (1) shall provide for early termination upon failure to meet performance standards which shall be specified in the agreement and which shall be weighted to take into account any performance in prior terms. Such performance standards shall include—

(A) measures for ease of access by beneficiaries to services; and

(B) measures for determining the extent to which failures in obtaining services for beneficiaries fall within acceptable parameters, as determined by the Commissioner.

(3) Preclusion from direct participation in delivery of services in own service area

Agreements under paragraph (1) shall preclude—

(A) direct participation by a program manager in the delivery of employment services, vocational rehabilitation services, or other support services to beneficiaries in the service area covered by the program manager's agreement; and

(B) the holding by a program manager of a financial interest in an employment network or service provider which provides services in a geographic area covered under the program manager's agreement.

(4) Selection of employment networks

(A) In general

The Commissioner shall select and enter into agreements with employment networks for service under the Program. Such employment networks shall be in addition to State agencies serving as employment networks pursuant to elections under subsection (c) of this section.

(B) Alternate participants

In any State where the Program is being implemented, the Commissioner shall enter into an agreement with any alternate participant that is operating under the authority of section 422(d)(2) of this title in the State as of December 17, 1999, and chooses to serve as an employment network under the Program.

(5) Termination of agreements with employment networks

The Commissioner shall terminate agreements with employment networks for inadequate performance, as determined by the Commissioner.

(6) Quality assurance

The Commissioner shall provide for such periodic reviews as are necessary to provide for effective quality assurance in the provision of services by employment networks. The Commissioner shall solicit and consider the views of consumers and the program manager under which the employment networks serve and shall consult with providers of services to develop performance measurements. The Commissioner shall ensure that the results of the periodic reviews are made available to beneficiaries who are prospective service recipients as they select employment networks. The Commissioner shall ensure that the periodic surveys of beneficiaries receiving services under the Program are designed to measure customer service satisfaction.

(7) Dispute resolution

The Commissioner shall provide for a mechanism for resolving disputes between beneficiaries and employment networks, between program managers and employment networks, and between program managers and providers of services. The Commissioner shall afford a party to such a dispute a reasonable opportunity for a full and fair review of the matter in dispute.

(e) Program managers

(1) In general

A program manager shall conduct tasks appropriate to assist the Commissioner in carrying out the Commissioner's duties in administering the Program.

(2) Recruitment of employment networks

A program manager shall recruit, and recommend for selection by the Commissioner, employment networks for service under the Program. The program manager shall carry out such recruitment and provide such recommendations, and shall monitor all employment networks serving in the Program in the geographic area covered under the program manager's agreement, to the extent necessary and appropriate to ensure that adequate choices of services are made available to beneficiaries. Employment networks may serve under the Program only pursuant to an agreement entered into with the Commissioner under the Program incorporating the applicable provisions of this section and regulations thereunder, and the program manager shall provide and maintain assurances to the Commissioner that payment by the Commissioner to employment networks pursuant to this section is warranted based on compliance by such employment networks with the terms of such agreement and this section. The program manager shall not impose numerical limits on the number of employment networks to be recommended pursuant to this paragraph.

(3) Facilitation of access by beneficiaries to employment networks

A program manager shall facilitate access by beneficiaries to employment networks. The program manager shall ensure that each beneficiary is allowed changes in employment networks without being deemed to have rejected services under the Program. When such a change occurs, the program manager shall reassign the ticket based on the choice of the beneficiary. Upon the request of the employment network, the program manager shall make a determination of the allocation of the outcome or milestone-outcome payments based on the services provided by each employment network. The program manager shall establish and maintain lists of employment networks available to beneficiaries and shall make such lists generally available to the public. The program manager shall ensure that all information provided to disabled beneficiaries pursuant to this paragraph is provided in accessible formats.

(4) Ensuring availability of adequate services

The program manager shall ensure that employment services, vocational rehabilitation services, and other support services are provided to beneficiaries throughout the geographic area covered under the program manager's agreement, including rural areas.

(5) Reasonable access to services

The program manager shall take such measures as are necessary to ensure that sufficient employment networks are available and that each beneficiary receiving services under the Program has reasonable access to employment services, vocational rehabilitation services, and other support services. Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program. The program manager shall ensure that such services are available in each service area.

(f) Employment networks

(1) Qualifications for employment networks

(A) In general

Each employment network serving under the Program shall consist of an agency or instrumentality of a State (or a political subdivision thereof) or a private entity, that assumes responsibility for the coordination and delivery of services under the Program to individuals assigning to the employment network tickets to work and self-sufficiency issued under subsection (b) of this section.

(B) One-stop delivery systems

An employment network serving under the Program may consist of a one-stop delivery system established under section 3151(e) of title 29.

(C) Compliance with selection criteria

No employment network may serve under the Program unless it meets and maintains

compliance with both general selection criteria (such as professional and educational qualifications, where applicable) and specific selection criteria (such as substantial expertise and experience in providing relevant employment services and supports).

(D) Single or associated providers allowed

An employment network shall consist of either a single provider of such services or of an association of such providers organized so as to combine their resources into a single entity. An employment network may meet the requirements of subsection (e)(4) of this section by providing services directly, or by entering into agreements with other individuals or entities providing appropriate employment services, vocational rehabilitation services, or other support services.

(2) Requirements relating to provision of services

Each employment network serving under the Program shall be required under the terms of its agreement with the Commissioner to—

(A) serve prescribed service areas; and

(B) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subsection (g) of this section.

(3) Annual financial reporting

Each employment network shall meet financial reporting requirements as prescribed by the Commissioner.

(4) Periodic outcomes reporting

Each employment network shall prepare periodic reports, on at least an annual basis, itemizing for the covered period specific outcomes achieved with respect to specific services provided by the employment network. Such reports shall conform to a national model prescribed under this section. Each employment network shall provide a copy of the latest report issued by the employment network pursuant to this paragraph to each beneficiary upon enrollment under the Program for services to be received through such employment network. Upon issuance of each report to each beneficiary, a copy of the report shall be maintained in the files of the employment network. The program manager shall ensure that copies of all such reports issued under this paragraph are made available to the public under reasonable terms.

(g) Individual work plans

(1) Requirements

Each employment network shall—

(A) take such measures as are necessary to ensure that employment services, vocational rehabilitation services, and other support services provided under the Program by, or under agreements entered into with, the employment network are provided under appropriate individual work plans that meet the requirements of subparagraph (C);

(B) develop and implement each such individual work plan, in partnership with each beneficiary receiving such services, in a manner that affords such beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that employment goal;

(C) ensure that each individual work plan includes at least—

(i) a statement of the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;

(ii) a statement of the services and supports that have been deemed necessary for the beneficiary to accomplish that goal;

(iii) a statement of any terms and conditions related to the provision of such services and supports; and

(iv) a statement of understanding regarding the beneficiary's rights under the Program (such as the right to retrieve the ticket to work and self-sufficiency if the beneficiary is dissatisfied with the services being provided by the employment network) and remedies available to the individual, including information on the availability of advocacy services and assistance in resolving disputes through the State grant program authorized under section 1320b–21 of this title;

(D) provide a beneficiary the opportunity to amend the individual work plan if a change in circumstances necessitates a change in the plan; and

(E) make each beneficiary's individual work plan available to the beneficiary in, as appropriate, an accessible format chosen by the beneficiary.

An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.].

(2) Effective upon written approval

A beneficiary's individual work plan shall take effect upon written approval by the beneficiary or a representative of the beneficiary and a representative of the employment network that, in providing such written approval, acknowledges assignment of the beneficiary's ticket to work and self-sufficiency.

(h) Employment network payment systems

(1) Election of payment system by employment networks

(A) In general

The Program shall provide for payment authorized by the Commissioner to employment networks under either an outcome payment system or an outcome-milestone payment system. Each employment network shall elect which payment system will be utilized by the employment network, and, for such period of time as such election re-

mains in effect, the payment system so elected shall be utilized exclusively in connection with such employment network (except as provided in subparagraph (B)).

(B) No change in method of payment for beneficiaries with tickets already assigned to the employment networks

Any election of a payment system by an employment network that would result in a change in the method of payment to the employment network for services provided to a beneficiary who is receiving services from the employment network at the time of the election shall not be effective with respect to payment for services provided to that beneficiary and the method of payment previously selected shall continue to apply with respect to such services.

(2) Outcome payment system

(A) In general

The outcome payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Payments made during outcome payment period

The outcome payment system shall provide for a schedule of payments to an employment network, in connection with each individual who is a beneficiary, for each month, during the individual's outcome payment period, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual because of work or earnings.

(C) Computation of payments to employment network

The payment schedule of the outcome payment system shall be designed so that—

(i) the payment for each month during the outcome payment period for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable is equal to a fixed percentage of the payment calculation base for the calendar year in which such month occurs; and

(ii) such fixed percentage is set at a percentage which does not exceed 40 percent.

(3) Outcome-milestone payment system

(A) In general

The outcome-milestone payment system shall consist of a payment structure governing employment networks electing such system under paragraph (1)(A) which meets the requirements of this paragraph.

(B) Early payments upon attainment of milestones in advance of outcome payment periods

The outcome-milestone payment system shall provide for 1 or more milestones, with respect to beneficiaries receiving services from an employment network under the Program, that are directed toward the goal of permanent employment. Such milestones shall form a part of a payment structure that provides, in addition to payments made during outcome payment periods, payments made prior to outcome payment periods in amounts based on the attainment of such milestones.

(C) Limitation on total payments to employment network

The payment schedule of the outcome milestone payment system shall be designed so that the total of the payments to the employment network with respect to each beneficiary is less than, on a net present value basis (using an interest rate determined by the Commissioner that appropriately reflects the cost of funds faced by providers), the total amount to which payments to the employment network with respect to the beneficiary would be limited if the employment network were paid under the outcome payment system.

(4) Definitions

In this subsection:

(A) Payment calculation base

The term ''payment calculation base'' means, for any calendar year—

(i) in connection with a title II disability beneficiary, the average disability insurance benefit payable under section 423 of this title for all beneficiaries for months during the preceding calendar year; and

(ii) in connection with a title XVI disability beneficiary (who is not concurrently a title II disability beneficiary), the average payment of supplemental security income benefits based on disability payable under subchapter XVI of this chapter (excluding State supplementation) for months during the preceding calendar year to all beneficiaries who have attained 18 years of age but have not attained 65 years of age.

(B) Outcome payment period

The term ''outcome payment period'' means, in connection with any individual who had assigned a ticket to work and self-sufficiency to an employment network under the Program, a period—

(i) beginning with the first month, ending after the date on which such ticket was assigned to the employment network, for which benefits (described in paragraphs (3) and (4) of subsection (k) of this section) are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity; and

(ii) ending with the 60th month (consecutive or otherwise), ending after such date, for which such benefits are not payable to such individual by reason of engagement in substantial gainful activity or by reason of earnings from work activity.

(5) Periodic review and alterations of prescribed schedules

(A) Percentages and periods

The Commissioner shall periodically review the percentage specified in paragraph

(2)(C), the total payments permissible under paragraph (3)(C), and the period of time specified in paragraph (4)(B) to determine whether such percentages, such permissible payments, and such period provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, while providing for appropriate economies. The Commissioner may alter such percentage, such total permissible payments, or such period of time to the extent that the Commissioner determines, on the basis of the Commissioner's review under this paragraph, that such an alteration would better provide the incentive and economies described in the preceding sentence.

(B) Number and amounts of milestone payments

The Commissioner shall periodically review the number and amounts of milestone payments established by the Commissioner pursuant to this section to determine whether they provide an adequate incentive for employment networks to assist beneficiaries to enter the workforce, taking into account information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, and other reliable sources. The Commissioner may from time to time alter the number and amounts of milestone payments initially established by the Commissioner pursuant to this section to the extent that the Commissioner determines that such an alteration would allow an adequate incentive for employment networks to assist beneficiaries to enter the workforce. Such alteration shall be based on information provided to the Commissioner by program managers, the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, or other reliable sources.

(C) Report on the adequacy of incentives

The Commissioner shall submit to the Congress not later than 36 months after December 17, 1999, a report with recommendations for a method or methods to adjust payment rates under subparagraphs (A) and (B), that would ensure adequate incentives for the provision of services by employment networks of—

(i) individuals with a need for ongoing support and services;

(ii) individuals with a need for high-cost accommodations;

(iii) individuals who earn a subminimum wage; and

(iv) individuals who work and receive partial cash benefits.

The Commissioner shall consult with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 during the development and evaluation of the study. The Commissioner shall implement the necessary adjusted payment rates prior to full implementation of the Ticket to Work and Self-Sufficiency Program.

(i) Suspension of disability reviews

During any period for which an individual is using, as defined by the Commissioner, a ticket to work and self-sufficiency issued under this section, the Commissioner (and any applicable State agency) may not initiate a continuing disability review or other review under section 421 of this title of whether the individual is or is not under a disability or a review under subchapter XVI of this chapter similar to any such review under section 421 of this title.

(j) Authorizations

(1) Payments to employment networks

(A) Title II disability beneficiaries

There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to make payments to employment networks under this section. Money paid from the Trust Funds under this section with respect to title II disability beneficiaries who are entitled to benefits under section 423 of this title or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such beneficiaries, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this section shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund.

(B) Title XVI disability beneficiaries

Amounts authorized to be appropriated to the Social Security Administration under section 1381 of this title shall include amounts necessary to carry out the provisions of this section with respect to title XVI disability beneficiaries.

(2) Administrative expenses

The costs of administering this section (other than payments to employment networks) shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among such amounts as appropriate.

(k) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means a title II disability beneficiary or a title XVI disability beneficiary.

(3) Title II disability beneficiary

The term ''title II disability beneficiary'' means an individual entitled to disability insurance benefits under section 423 of this title

or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title). An individual is a title II disability beneficiary for each month for which such individual is entitled to such benefits.

(4) Title XVI disability beneficiary

The term ''title XVI disability beneficiary'' means an individual eligible for supplemental security income benefits under subchapter XVI of this chapter on the basis of blindness (within the meaning of section 1382c(a)(2) of this title) or disability (within the meaning of section 1382c(a)(3) of this title). An individual is a title XVI disability beneficiary for each month for which such individual is eligible for such benefits.

(5) Supplemental security income benefit

The term ''supplemental security income benefit under subchapter XVI of this chapter'' means a cash benefit under section 1382 or 1382h(a) of this title, and does not include a State supplementary payment, administered federally or otherwise.

(*l*) Regulations

Not later than 1 year after December 17, 1999, the Commissioner shall prescribe such regulations as are necessary to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1148, as added Pub. L. 106–170, title I, § 101(a), Dec. 17, 1999, 113 Stat. 1863; amended Pub. L. 108–203, title IV, § 405(a), Mar. 2, 2004, 118 Stat. 526; Pub. L. 113–128, title V, § 512(dd)(2), July 22, 2014, 128 Stat. 1718.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (c)(1), (2)(A) and (g)(1), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. Title I of the Act is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (g)(1), is classified generally to Title 26, Internal Revenue Code.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (h)(5)(B), (C), is section 101(f) of Pub. L. 106–170, which is set out as a note below.

AMENDMENTS

2014—Subsec. (f)(1)(B). Pub. L. 113–128 substituted ''a one-stop delivery system established under section 3151(e) of title 29'' for ''a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.)''.

2004—Subsec. (g)(1). Pub. L. 108–203 inserted concluding provisions.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 405(b), Mar. 2, 2004, 118 Stat. 527, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).''

EFFECTIVE DATE

Pub. L. 106–170, title I, § 101(c), 113 Stat. 1874, provided that: ''Subject to subsection (d) [set out as a note below], the amendments made by subsections (a) and (b) [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] shall take effect with the first month following 1 year after the date of the enactment of this Act [Dec. 17, 1999].''

REGULATIONS

Pub. L. 106–170, title I, § 101(e), Dec. 17, 1999, 113 Stat. 1877, provided that:

''(1) IN GENERAL.—The Commissioner of Social Security shall prescribe such regulations as are necessary to implement the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title].

''(2) SPECIFIC MATTERS TO BE INCLUDED IN REGULATIONS.—The matters which shall be addressed in such regulations shall include—

''(A) the form and manner in which tickets to work and self-sufficiency may be distributed to beneficiaries pursuant to section 1148(b)(1) of the Social Security Act [42 U.S.C. 1320b–19(b)(1)];

''(B) the format and wording of such tickets, which shall incorporate by reference any contractual terms governing service by employment networks under the Program;

''(C) the form and manner in which State agencies may elect participation in the Ticket to Work and Self-Sufficiency Program pursuant to section 1148(c)(1) of such Act and provision for periodic opportunities for exercising such elections;

''(D) the status of State agencies under section 1148(c)(1) of such Act at the time that State agencies exercise elections under that section;

''(E) the terms of agreements to be entered into with program managers pursuant to section 1148(d) of such Act, including—

''(i) the terms by which program managers are precluded from direct participation in the delivery of services pursuant to section 1148(d)(3) of such Act;

''(ii) standards which must be met by quality assurance measures referred to in paragraph (6) of section 1148(d) of such Act and methods of recruitment of employment networks utilized pursuant to paragraph (2) of section 1148(e) of such Act; and

''(iii) the format under which dispute resolution will operate under section 1148(d)(7) of such Act;

''(F) the terms of agreements to be entered into with employment networks pursuant to section 1148(d)(4) of such Act, including—

''(i) the manner in which service areas are specified pursuant to section 1148(f)(2)(A) of such Act;

''(ii) the general selection criteria and the specific selection criteria which are applicable to employment networks under section 1148(f)(1)(C) of such Act in selecting service providers;

''(iii) specific requirements relating to annual financial reporting by employment networks pursuant to section 1148(f)(3) of such Act; and

''(iv) the national model to which periodic outcomes reporting by employment networks must conform under section 1148(f)(4) of such Act;

''(G) standards which must be met by individual work plans pursuant to section 1148(g) of such Act;

''(H) standards which must be met by payment systems required under section 1148(h) of such Act, including—

''(i) the form and manner in which elections by employment networks of payment systems are to be exercised pursuant to section 1148(h)(1)(A) of such Act;

''(ii) the terms which must be met by an outcome payment system under section 1148(h)(2) of such Act;

''(iii) the terms which must be met by an outcome-milestone payment system under section 1148(h)(3) of such Act;

''(iv) any revision of the percentage specified in paragraph (2)(C) of section 1148(h) of such Act or the period of time specified in paragraph (4)(B) of such section 1148(h) of such Act; and

''(v) annual oversight procedures for such systems; and

''(I) procedures for effective oversight of the Program by the Commissioner of Social Security, including periodic reviews and reporting requirements.''

GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Pub. L. 108–203, title IV, §406, Mar. 2, 2004, 118 Stat. 527, provided that:

''(a) [sic] GAO REPORT.—Not later than 12 months after the date of enactment of this Act [Mar. 2, 2004], the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that—

''(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 [Pub. L. 106–170] (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

''(2) assesses the effectiveness of the activities carried out under such program; and

''(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.''

FINDINGS AND PURPOSES

Pub. L. 106–170, §2, Dec. 17, 1999, 113 Stat. 1862, provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) It is the policy of the United States to provide assistance to individuals with disabilities to lead productive work lives.

''(2) Health care is important to all Americans.

''(3) Health care is particularly important to individuals with disabilities and special health care needs who often cannot afford the insurance available to them through the private market, are uninsurable by the plans available in the private sector, and are at great risk of incurring very high and economically devastating health care costs.

''(4) Americans with significant disabilities often are unable to obtain health care insurance that provides coverage of the services and supports that enable them to live independently and enter or rejoin the workforce. Personal assistance services (such as attendant services, personal assistance with transportation to and from work, reader services, job coaches, and related assistance) remove many of the barriers between significant disability and work. Coverage for such services, as well as for prescription drugs, durable medical equipment, and basic health care are powerful and proven tools for individuals with significant disabilities to obtain and retain employment.

''(5) For individuals with disabilities, the fear of losing health care and related services is one of the greatest barriers keeping the individuals from maximizing their employment, earning potential, and independence.

''(6) Social Security Disability Insurance and Supplemental Security Income beneficiaries risk losing medicare or medicaid coverage that is linked to their cash benefits, a risk that is an equal, or greater, work disincentive than the loss of cash benefits associated with working.

''(7) Individuals with disabilities have greater opportunities for employment than ever before, aided by important public policy initiatives such as the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), advancements in public understanding of disability, and innovations in assistive technology, medical treatment, and rehabilitation.

''(8) Despite such historic opportunities and the desire of millions of disability recipients to work and support themselves, fewer than one-half of one percent of Social Security Disability Insurance and Supplemental Security Income beneficiaries leave the disability rolls and return to work.

''(9) In addition to the fear of loss of health care coverage, beneficiaries cite financial disincentives to work and earn income and lack of adequate employment training and placement services as barriers to employment.

''(10) Eliminating such barriers to work by creating financial incentives to work and by providing individuals with disabilities real choice in obtaining the services and technology they need to find, enter, and maintain employment can greatly improve their short and long-term financial independence and personal well-being.

''(11) In addition to the enormous advantages such changes promise for individuals with disabilities, redesigning government programs to help individuals with disabilities return to work may result in significant savings and extend the life of the Social Security Disability Insurance Trust Fund.

''(12) If only an additional one-half of one percent of the current Social Security Disability Insurance and Supplemental Security Income recipients were to cease receiving benefits as a result of employment, the savings to the Social Security Trust Funds and to the Treasury in cash assistance would total $3,500,000,000 over the worklife of such individuals, far exceeding the cost of providing incentives and services needed to assist them in entering work and achieving financial independence to the best of their abilities.

''(b) PURPOSES.—The purposes of this Act [see Tables for classification] are as follows:

''(1) To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependency on cash benefit programs.

''(2) To encourage States to adopt the option of allowing individuals with disabilities to purchase medicaid coverage that is necessary to enable such individuals to maintain employment.

''(3) To provide individuals with disabilities the option of maintaining medicare coverage while working.

''(4) To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.''

GRADUATED IMPLEMENTATION OF PROGRAM

Pub. L. 106–170, title I, §101(d), Dec. 17, 1999, 113 Stat. 1874, provided that:

''(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 17, 1999], the Commissioner of Social Security shall commence implementation of the amendments made by this section [enacting this section and amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title] (other than paragraphs (1)(C) and (2)(B) of subsection (b) [amending sections 422 and 1382d of this title]) in graduated phases at phase-in sites selected by the Commissioner. Such phase-in sites shall be selected so as to ensure, prior to full implementation of the Ticket to Work and Self-Sufficiency Program, the development and refinement of referral processes, payment systems, computer linkages, management information systems, and administrative processes necessary to provide for full implementation of such amendments. Subsection (c) [set out

as a note above] shall apply with respect to paragraphs (1)(C) and (2)(B) of subsection (b) without regard to this subsection.

''(2) REQUIREMENTS.—Implementation of the Program at each phase-in site shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration, so as to ensure that the most efficacious methods are determined and in place for full implementation of the Program on a timely basis.

''(3) FULL IMPLEMENTATION.—The Commissioner shall ensure that ability to provide tickets and services to individuals under the Program exists in every State as soon as practicable on or after the effective date specified in subsection (c) but not later than 3 years after such date.

''(4) ONGOING EVALUATION OF PROGRAM.—

''(A) IN GENERAL.—The Commissioner shall provide for independent evaluations to assess the effectiveness of the activities carried out under this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes under this section] and the amendments made thereby. Such evaluations shall address the cost-effectiveness of such activities, as well as the effects of this section and the amendments made thereby on work outcomes for beneficiaries receiving tickets to work and self-sufficiency under the Program.

''(B) CONSULTATION.—Evaluations shall be conducted under this paragraph after receiving relevant advice from experts in the fields of disability, vocational rehabilitation, and program evaluation and individuals using tickets to work and self-sufficiency under the Program and in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act [set out as a note below], the Comptroller General of the United States, other agencies of the Federal Government, and private organizations with appropriate expertise.

''(C) METHODOLOGY.—

''(i) IMPLEMENTATION.—The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of this Act, shall ensure that plans for evaluations and data collection methods under the Program are appropriately designed to obtain detailed employment information.

''(ii) SPECIFIC MATTERS TO BE ADDRESSED.—Each such evaluation shall address (but is not limited to)—

''(I) the annual cost (including net cost) of the Program and the annual cost (including net cost) that would have been incurred in the absence of the Program;

''(II) the determinants of return to work, including the characteristics of beneficiaries in receipt of tickets under the Program;

''(III) the types of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and to those who do not return to work;

''(IV) the duration of employment services, vocational rehabilitation services, and other support services furnished to beneficiaries in receipt of tickets under the Program who return to work and the duration of such services furnished to those who do not return to work and the cost to employment networks of furnishing such services;

''(V) the employment outcomes, including wages, occupations, benefits, and hours worked, of beneficiaries who return to work after receiving tickets under the Program and those who return to work without receiving such tickets;

''(VI) the characteristics of individuals in possession of tickets under the Program who are not accepted for services and, to the extent reasonably determinable, the reasons for which such beneficiaries were not accepted for services;

''(VII) the characteristics of providers whose services are provided within an employment network under the Program;

''(VIII) the extent (if any) to which employment networks display a greater willingness to provide services to beneficiaries with a range of disabilities;

''(IX) the characteristics (including employment outcomes) of those beneficiaries who receive services under the outcome payment system and of those beneficiaries who receive services under the outcome-milestone payment system;

''(X) measures of satisfaction among beneficiaries in receipt of tickets under the Program; and

''(XI) reasons for (including comments solicited from beneficiaries regarding) their choice not to use their tickets or their inability to return to work despite the use of their tickets.

''(D) PERIODIC EVALUATION REPORTS.—Following the close of the third and fifth fiscal years ending after the effective date under subsection (c), and prior to the close of the seventh fiscal year ending after such date, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the Commissioner's evaluation of the progress of activities conducted under the provisions of this section and the amendments made thereby. Each such report shall set forth the Commissioner's evaluation of the extent to which the Program has been successful and the Commissioner's conclusions on whether or how the Program should be modified. Each such report shall include such data, findings, materials, and recommendations as the Commissioner may consider appropriate.

''(5) EXTENT OF STATE'S RIGHT OF FIRST REFUSAL IN ADVANCE OF FULL IMPLEMENTATION OF AMENDMENTS IN SUCH STATE.—

''(A) IN GENERAL.—In the case of any State in which the amendments made by subsection (a) [enacting this section] have not been fully implemented pursuant to this subsection, the Commissioner shall determine by regulation the extent to which—

''(i) the requirement under section 222(a) of the Social Security Act (42 U.S.C. 422(a)) for prompt referrals to a State agency; and

''(ii) the authority of the Commissioner under section 222(d)(2) of such Act (42 U.S.C. 422(d)(2)) to provide vocational rehabilitation services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals,

shall apply in such State.

''(B) EXISTING AGREEMENTS.—Nothing in subparagraph (A) or the amendments made by subsection (a) [enacting this section] shall be construed to limit, impede, or otherwise affect any agreement entered into pursuant to section 222(d)(2) of the Social Security Act (42 U.S.C. 422(d)(2)) before the date of the enactment of this Act [Dec. 17, 1999] with respect to services provided pursuant to such agreement to beneficiaries receiving services under such agreement as of such date, except with respect to services (if any) to be provided after 3 years after the effective date provided in subsection (c).''

TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL

Pub. L. 106–170, title I, § 101(f), Dec. 17, 1999, 113 Stat. 1878, provided that:

''(1) ESTABLISHMENT.—There is established within the Social Security Administration a panel to be known as the 'Ticket to Work and Work Incentives Advisory Panel' (in this subsection referred to as the 'Panel').

''(2) DUTIES OF PANEL.—It shall be the duty of the Panel to—

''(A) advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentives programs, planning, and assistance

for individuals with disabilities, including work incentive provisions under titles II, XI, XVI, XVIII, and XIX of the Social Security Act (42 U.S.C. 401 et seq., 1301 et seq., 1381 et seq., 1395 et seq., 1396 et seq.); and

''(B) with respect to the Ticket to Work and Self-Sufficiency Program established under section 1148 of such Act [42 U.S.C. 1320b–19]—

''(i) advise the Commissioner of Social Security with respect to establishing phase-in sites for such Program and fully implementing the Program thereafter, the refinement of access of disabled beneficiaries to employment networks, payment systems, and management information systems, and advise the Commissioner whether such measures are being taken to the extent necessary to ensure the success of the Program;

''(ii) advise the Commissioner regarding the most effective designs for research and demonstration projects associated with the Program or conducted pursuant to section 302 of this Act [set out as a note under section 434 of this title];

''(iii) advise the Commissioner on the development of performance measurements relating to quality assurance under section 1148(d)(6) of the Social Security Act [42 U.S.C. 1320b–19(d)(6)]; and

''(iv) furnish progress reports on the Program to the Commissioner and each House of Congress.

''(3) MEMBERSHIP.—

''(A) NUMBER AND APPOINTMENT.—The Panel shall be composed of 12 members as follows:

''(i) four members appointed by the President, not more than two of whom may be of the same political party;

''(ii) two members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives;

''(iii) two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Ways and Means of the House of Representatives;

''(iv) two members appointed by the majority leader of the Senate, in consultation with the Chairman of the Committee on Finance of the Senate; and

''(v) two members appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Finance of the Senate.

''(B) REPRESENTATION.—

''(i) IN GENERAL.—The members appointed under subparagraph (A) shall have experience or expert knowledge as a recipient, provider, employer, or employee in the fields of, or related to, employment services, vocational rehabilitation services, and other support services.

''(ii) REQUIREMENT.—At least one-half of the members appointed under subparagraph (A) shall be individuals with disabilities, or representatives of individuals with disabilities, with consideration given to current or former title II [42 U.S.C. 401 et seq.] disability beneficiaries or title XVI [42 U.S.C. 1381 et seq.] disability beneficiaries (as such terms are defined in section 1148(k) of the Social Security Act [42 U.S.C. 1320b–19(k)] (as added by subsection (a)).

''(C) TERMS.—

''(i) IN GENERAL.—Each member shall be appointed for a term of 4 years (or, if less, for the remaining life of the Panel), except as provided in clauses (ii) and (iii). The initial members shall be appointed not later than 90 days after the date of the enactment of this Act [Dec. 17, 1999].

''(ii) TERMS OF INITIAL APPOINTEES.—Of the members first appointed under each clause of subparagraph (A), as designated by the appointing authority for each such clause—

''(I) one-half of such members shall be appointed for a term of 2 years; and

''(II) the remaining members shall be appointed for a term of 4 years.

''(iii) 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 the Panel shall be filled in the manner in which the original appointment was made.

''(D) BASIC PAY.—Members shall each be paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(E) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(F) QUORUM.—Eight members of the Panel shall constitute a quorum but a lesser number may hold hearings.

''(G) CHAIRPERSON.—The Chairperson of the Panel shall be designated by the President. The term of office of the Chairperson shall be 4 years.

''(H) MEETINGS.—The Panel shall meet at least quarterly and at other times at the call of the Chairperson or a majority of its members.

''(4) DIRECTOR AND STAFF OF PANEL; EXPERTS AND CONSULTANTS.—

''(A) DIRECTOR.—The Panel shall have a Director who shall be appointed by the Chairperson, and paid at a rate, and in a manner, that is consistent with guidelines established under section 7 of the Federal Advisory Committee Act (5 U.S.C. App.).

''(B) STAFF.—Subject to rules prescribed by the Commissioner of Social Security, the Director may appoint and fix the pay of additional personnel as the Director considers appropriate.

''(C) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commissioner of Social Security, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(D) STAFF OF FEDERAL AGENCIES.—Upon request of the Panel, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Panel to assist it in carrying out its duties under this Act [see Tables for classification].

''(5) POWERS OF PANEL.—

''(A) HEARINGS AND SESSIONS.—The Panel may, for the purpose of carrying out its duties under this subsection, hold such hearings, sit and act at such times and places, and take such testimony and evidence as the Panel considers appropriate.

''(B) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Panel may, if authorized by the Panel, take any action which the Panel is authorized to take by this section [enacting this section, amending sections 421, 422, 425, 1382d, 1383, and 1383b of this title, and enacting provisions set out as notes above].

''(C) MAILS.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(6) REPORTS.—

''(A) INTERIM REPORTS.—The Panel shall submit to the President and the Congress interim reports at least annually.

''(B) FINAL REPORT.—The Panel shall transmit a final report to the President and the Congress not later than eight years after the date of the enactment of this Act [Dec. 17, 1999]. The final report shall contain a detailed statement of the findings and conclusions of the Panel, together with its recommendations for legislation and administrative actions which the Panel considers appropriate.

''(7) TERMINATION.—The Panel shall terminate 30 days after the date of the submission of its final report under paragraph (6)(B).

''(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Old-Age

and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the general fund of the Treasury, as appropriate, such sums as are necessary to carry out this subsection.''

§ 1320b–20. Work incentives outreach program

(a) Establishment

(1) In general

The Commissioner, in consultation with the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, shall establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues related to such programs.

(2) Grants, cooperative agreements, contracts, and outreach

Under the program established under this section, the Commissioner shall—

(A) establish a competitive program of grants, cooperative agreements, or contracts to provide benefits planning and assistance, including information on the availability of protection and advocacy services, to disabled beneficiaries, including individuals participating in the Ticket to Work and Self-Sufficiency Program established under section 1320b–19 of this title, the program established under section 1382h of this title, and other programs that are designed to encourage disabled beneficiaries to work;

(B) conduct directly, or through grants, cooperative agreements, or contracts, ongoing outreach efforts to disabled beneficiaries (and to the families of such beneficiaries) who are potentially eligible to participate in Federal or State work incentive programs that are designed to assist disabled beneficiaries to work, including—

(i) preparing and disseminating information explaining such programs; and

(ii) working in cooperation with other Federal, State, and private agencies and nonprofit organizations that serve disabled beneficiaries, and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling;

(C) establish a corps of trained, accessible, and responsive work incentives specialists within the Social Security Administration who will specialize in disability work incentives under subchapters II and XVI of this chapter for the purpose of disseminating accurate information with respect to inquiries and issues relating to work incentives to—

(i) disabled beneficiaries;

(ii) benefit applicants under subchapters II and XVI of this chapter; and

(iii) individuals or entities awarded grants under subparagraphs[1] (A) or (B); and

(D) provide—

(i) training for work incentives specialists and individuals providing planning assistance described in subparagraph (C); and

(ii) technical assistance to organizations and entities that are designed to encourage disabled beneficiaries to return to work.

(3) Coordination with other programs

The responsibilities of the Commissioner established under this section shall be coordinated with other public and private programs that provide information and assistance regarding rehabilitation services and independent living supports and benefits planning for disabled beneficiaries including the program under section 1382h of this title, the plans for achieving self-support program (PASS), and any other Federal or State work incentives programs that are designed to assist disabled beneficiaries, including educational agencies that provide information and assistance regarding rehabilitation, school-to-work programs, transition services (as defined in, and provided in accordance with, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)), a one-stop delivery system established under section 3151(e) of title 29, and other services.

(b) Conditions

(1) Selection of entities

(A) Application

An entity shall submit an application for a grant, cooperative agreement, or contract to provide benefits planning and assistance to the Commissioner at such time, in such manner, and containing such information as the Commissioner may determine is necessary to meet the requirements of this section.

(B) Statewideness

The Commissioner shall ensure that the planning, assistance, and information described in paragraph (2) shall be available on a statewide basis.

(C) Eligibility of States and private organizations

(i) In general

The Commissioner may award a grant, cooperative agreement, or contract under this section to a State or a private agency or organization (other than Social Security Administration Field Offices and the State agency administering the State medicaid program under subchapter XIX of this chapter, including any agency or entity described in clause (ii), that the Commissioner determines is qualified to provide the planning, assistance, and information described in paragraph (2)).

(ii) Agencies and entities described

The agencies and entities described in this clause are the following:

(I) Any public or private agency or organization (including Centers for Independent Living established under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), protection and advocacy organizations, client assistance programs established in accordance with section 112 of the Rehabilitation Act of

[1] So in original. Probably should be ''subparagraph''.

1973 (29 U.S.C. 732), and State Developmental Disabilities Councils established in accordance with section 6024[2] of this title) that the Commissioner determines satisfies the requirements of this section.

(II) The State agency administering the State program funded under part A of subchapter IV of this chapter.

(D) Exclusion for conflict of interest

The Commissioner may not award a grant, cooperative agreement, or contract under this section to any entity that the Commissioner determines would have a conflict of interest if the entity were to receive a grant, cooperative agreement, or contract under this section.

(2) Services provided

A recipient of a grant, cooperative agreement, or contract to provide benefits planning and assistance shall select individuals who will act as planners and provide information, guidance, and planning to disabled beneficiaries on the—

(A) availability and interrelation of any Federal or State work incentives programs designed to assist disabled beneficiaries that the individual may be eligible to participate in;

(B) adequacy of any health benefits coverage that may be offered by an employer of the individual and the extent to which other health benefits coverage may be available to the individual; and

(C) availability of protection and advocacy services for disabled beneficiaries and how to access such services.

(3) Amount of grants, cooperative agreements, or contracts

(A) Based on population of disabled beneficiaries

Subject to subparagraph (B), the Commissioner shall award a grant, cooperative agreement, or contract under this section to an entity based on the percentage of the population of the State where the entity is located who are disabled beneficiaries.

(B) Limitations

(i) Per grant

No entity shall receive a grant, cooperative agreement, or contract under this section for a fiscal year that is less than $50,000 or more than $300,000.

(ii) Total amount for all grants, cooperative agreements, and contracts

The total amount of all grants, cooperative agreements, and contracts awarded under this section for a fiscal year may not exceed $23,000,000.

(4) Funding

(A) Allocation of costs

The costs of carrying out this section shall be paid from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(B) Carryover

An amount not in excess of 10 percent of the total amount obligated through a grant, cooperative agreement, or contract awarded under this section for a fiscal year to a State or a private agency or organization shall remain available for obligation to such State or private agency or organization until the end of the succeeding fiscal year. Any such amount remaining available for obligation during such succeeding fiscal year shall be available for providing benefits planning and assistance only for individuals who are within the caseload of the recipient of the grant, agreement, or contract as of immediately before the beginning of such fiscal year.

(c) Annual report

Each entity awarded a grant, cooperative agreement, or contract under this section shall submit an annual report to the Commissioner on the benefits planning and assistance provided to individuals under such grant, agreement, or contract.

(d) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2011.

(Aug. 14, 1935, ch. 531, title XI, §1149, as added Pub. L. 106–170, title I, §121, Dec. 17, 1999, 113 Stat. 1887; amended Pub. L. 108–203, title IV, §§404(a)(1), 407(a), Mar. 2, 2004, 118 Stat. 525, 527; Pub. L. 111–63, §2, Sept. 18, 2009, 123 Stat. 2001; Pub. L. 111–280, §§2(a), 3(a), (b)(1), Oct. 13, 2010, 124 Stat. 2903; Pub. L. 113–128, title V, §512(dd)(3), July 22, 2014, 128 Stat. 1718.)

REFERENCES IN TEXT

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec.

[2] See References in Text note below.

(a)(1), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

The Individuals with Disabilities Education Act, referred to in subsec. (a)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(1)(C)(ii)(I), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355. Title VII of the Act is classified generally to subchapter VII (§ 796 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 6024 of this title, referred to in subsec. (b)(1)(C)(ii)(I), was repealed by Pub. L. 106–402, title IV, § 401(a), Oct. 30, 2000, 114 Stat. 1737. See section 15025 of this title.

Section 212 of Public Law 93–66, referred to in subsec. (d)(2)(B), is set out as a note under section 1382 of this title.

AMENDMENTS

2014—Subsec. (a)(3). Pub. L. 113–128 substituted ''a one-stop delivery system established under section 3151(e) of title 29'' for ''a one-stop delivery system established under subtitle B of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2811 et seq.)''.

2010—Subsec. (b)(4). Pub. L. 111–280, § 3(b)(1), substituted ''Funding'' for ''Allocation of costs'' in par. (4) heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (c). Pub. L. 111–280, § 3(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 111–280, § 3(a), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 111–280, § 2(a), substituted ''2011'' for ''2010''.

Subsec. (e). Pub. L. 111–280, § 3(a), redesignated subsec. (d) as (e).

2009—Subsec. (d). Pub. L. 111–63 substituted ''2010'' for ''2009''.

2004—Subsec. (c)(2). Pub. L. 108–203, § 404(a)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (d). Pub. L. 108–203, § 407(a), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–280, § 3(b)(2), Oct. 13, 2010, 124 Stat. 2904, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to amounts allotted under section 1149 of the Social Security Act [42 U.S.C. 1320b–20] for payment for a fiscal year after fiscal year 2010.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, § 404(a)(2), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–21. State grants for work incentives assistance to disabled beneficiaries

(a) In general

Subject to subsection (c) of this section, the Commissioner may make payments in each State to the protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.)[1] for the purpose of providing services to disabled beneficiaries.

(b) Services provided

Services provided to disabled beneficiaries pursuant to a payment made under this section may include—

(1) information and advice about obtaining vocational rehabilitation and employment services; and

(2) advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain gainful employment.

(c) Application

In order to receive payments under this section, a protection and advocacy system shall submit an application to the Commissioner, at such time, in such form and manner, and accompanied by such information and assurances as the Commissioner may require.

(d) Amount of payments

(1) In general

Subject to the amount appropriated for a fiscal year for making payments under this section, a protection and advocacy system shall not be paid an amount that is less than—

(A) in the case of a protection and advocacy system located in a State (including the District of Columbia and Puerto Rico) other than Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the greater of—

(i) $100,000; or

(ii) ⅓ of 1 percent of the amount available for payments under this section; and

(B) in the case of a protection and advocacy system located in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, $50,000.

(2) Inflation adjustment

For each fiscal year in which the total amount appropriated to carry out this section exceeds the total amount appropriated to carry out this section in the preceding fiscal year, the Commissioner shall increase each minimum payment under subparagraphs (A) and (B) of paragraph (1) by a percentage equal to the percentage increase in the total amount so appropriated to carry out this section.

(e) Annual report

Each protection and advocacy system that receives a payment under this section shall submit an annual report to the Commissioner and the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 on the services provided to individuals by the system.

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[1] See References in Text note below.

(f) Funding

(1) Allocation of payments

Payments under this section shall be made from amounts made available for the administration of subchapter II of this chapter and amounts made available for the administration of subchapter XVI of this chapter, and shall be allocated among those amounts as appropriate.

(2) Carryover

Any amounts allotted for payment to a protection and advocacy system under this section for a fiscal year shall remain available for payment to or on behalf of the protection and advocacy system until the end of the succeeding fiscal year.

(g) Definitions

In this section:

(1) Commissioner

The term ''Commissioner'' means the Commissioner of Social Security.

(2) Disabled beneficiary

The term ''disabled beneficiary'' means an individual—

(A) who is a disabled beneficiary as defined in section 1320b–19(k)(2) of this title;

(B) who is receiving a cash payment described in section 1382e(a) of this title or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66);

(C) who, pursuant to section 1382h(b) of this title, is considered to be receiving benefits under subchapter XVI of this chapter; or

(D) who is entitled to benefits under part A of subchapter XVIII of this chapter by reason of the penultimate sentence of section 426(b) of this title.

(3) Protection and advocacy system

The term ''protection and advocacy system'' means a protection and advocacy system established pursuant to part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.).[1]

(h) Authorization of appropriations

There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2011.

(Aug. 14, 1935, ch. 531, title XI, §1150, as added Pub. L. 106–170, title I, §122, Dec. 17, 1999, 113 Stat. 1890; amended Pub. L. 108–203, title IV, §§404(b)(1), (2), 407(b), Mar. 2, 2004, 118 Stat. 526, 527; Pub. L. 111–63, §3, Sept. 18, 2009, 123 Stat. 2001; Pub. L. 111–280, §2(b), Oct. 13, 2010, 124 Stat. 2903.)

REFERENCES IN TEXT

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsecs. (a) and (g)(3), is title I of Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 282, as amended generally by Pub. L. 98–527, §2, Oct. 19, 1984, 98 Stat. 2662, and as further amended, which was repealed by Pub. L. 106–402, title IV, §401(a), Oct. 30, 2000, 114 Stat. 1737. Part C of the Act was classified generally to subchapter III (§6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Tables.

Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, referred to in subsec. (e), is section 101(f) of Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

Section 212 of Public Law 93–66, referred to in subsec. (g)(2)(B), is set out as a note under section 1382 of this title.

AMENDMENTS

2010—Subsec. (h). Pub. L. 111–280 substituted ''2011'' for ''2010''.

2009—Subsec. (h). Pub. L. 111–63 substituted ''2010'' for ''2009''.

2004—Subsec. (b)(2). Pub. L. 108–203, §404(b)(2), substituted ''secure, maintain, or regain'' for ''secure or regain''.

Subsec. (g)(2). Pub. L. 108–203, §404(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'disabled beneficiary' has the meaning given that term in section 1320b–19(k)(2) of this title.''

Subsec. (h). Pub. L. 108–203, §407(b), substituted ''2009'' for ''2004''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–203, title IV, §404(b)(3), Mar. 2, 2004, 118 Stat. 526, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to payments provided after the date of the enactment of this Act [Mar. 2, 2004].''

§ 1320b–22. Grants to develop and establish State infrastructures to support working individuals with disabilities

(a) Establishment

(1) In general

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants described in subsection (b) of this section to States to support the design, establishment, and operation of State infrastructures that provide items and services to support working individuals with disabilities.

(2) Application

In order to be eligible for an award of a grant under this section, a State shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require.

(3) Definition of State

In this section, the term ''State'' means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Grants for infrastructure and outreach

(1) In general

Out of the funds appropriated under subsection (e) of this section, the Secretary shall award grants to States to—

(A) support the establishment, implementation, and operation of the State infrastructures described in subsection (a) of this section; and

(B) conduct outreach campaigns regarding the existence of such infrastructures.

(2) Eligibility for grants

(A) In general

No State may receive a grant under this subsection unless the State demonstrates to the satisfaction of the Secretary that the State makes personal assistance services available under the State plan under subchapter XIX of this chapter to the extent necessary to enable individuals with disabilities to remain employed, including individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title if the State has elected to provide medical assistance under such plan to such individuals.

(B) Definitions

In this section:

(i) Employed

The term ''employed'' means—

(I) earning at least the applicable minimum wage requirement under section 206 of title 29 and working at least 40 hours per month; or

(II) being engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, as defined and approved by the Secretary.

(ii) Personal assistance services

The term ''personal assistance services'' means a range of services, provided by 1 or more persons, designed to assist an individual with a disability to perform daily activities on and off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(3) Determination of awards

(A) In general

Subject to subparagraph (B), the Secretary shall develop a methodology for awarding grants to States under this section for a fiscal year in a manner that—

(i) rewards States for their efforts in encouraging individuals described in paragraph (2)(A) to be employed; and

(ii) does not provide a State that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title with proportionally more funds for a fiscal year than a State that has exercised such election.

(B) Award limits

(i) Minimum awards

(I) In general

Subject to subclause (II), no State with an approved application under this section shall receive a grant for a fiscal year that is less than $500,000.

(II) Pro rata reductions

If the funds appropriated under subsection (e) of this section for a fiscal year are not sufficient to pay each State with an application approved under this section the minimum amount described in subclause (I), the Secretary shall pay each such State an amount equal to the pro rata share of the amount made available.

(ii) Maximum awards

(I) States that elected optional medicaid eligibility

No State that has an application that has been approved under this section and that has elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title shall receive a grant for a fiscal year that exceeds 10 percent of the total expenditures by the State (including the reimbursed Federal share of such expenditures) for medical assistance provided under such subchapter for such individuals, as estimated by the State and approved by the Secretary.

(II) Other States

The Secretary shall determine, consistent with the limit described in subclause (I), a maximum award limit for a grant for a fiscal year for a State that has an application that has been approved under this section but that has not elected to provide medical assistance under subchapter XIX of this chapter to individuals described in section 1396a(a)(10)(A)(ii)(XIII) of this title.

(c) Availability of funds

(1) Funds awarded to States

Funds awarded to a State under a grant made under this section for a fiscal year shall remain available until expended.

(2) Funds not awarded to States

Funds not awarded to States in the fiscal year for which they are appropriated shall remain available in succeeding fiscal years for awarding by the Secretary.

(d) Annual report

A State that is awarded a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant. Each report shall include the percentage increase in the number of title II disability beneficiaries, as defined in section 1320b–19(k)(3) of this title (as added by section 101(a) of this Act) in the State, and title XVI disability beneficiaries, as defined in section 1320b–19(k)(4) of this title (as so added) in the State who return to work.

(e) Appropriation

(1) In general

Out of any funds in the Treasury not otherwise appropriated, there is appropriated to make grants under this section—

(A) for fiscal year 2001, $20,000,000;

(B) for fiscal year 2002, $25,000,000;

(C) for fiscal year 2003, $30,000,000;

(D) for fiscal year 2004, $35,000,000;

(E) for fiscal year 2005, $40,000,000; and

(F) for each of fiscal years 2006 through 2011, the amount appropriated for the preceding fiscal year increased by the percentage increase (if any) in the Consumer Price Index for All Urban Consumers (United States city average) for the preceding fiscal year.

(2) Budget authority

This subsection constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment of the amounts appropriated under paragraph (1).

(f) Recommendation

Not later than October 1, 2010, the Secretary, in consultation with the Ticket to Work and Work Incentives Advisory Panel established by section 101(f) of this Act, shall submit a recommendation to the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate regarding whether the grant program established under this section should be continued after fiscal year 2011.

(Pub. L. 106–170, title II, § 203, Dec. 17, 1999, 113 Stat. 1894.)

REFERENCES IN TEXT

Section 101(a) of this Act, referred to in subsec. (d), is section 101(a) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, which enacted section 1320b–19 of this title.

Section 101(f) of this Act, referred to in subsec. (f), is section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, which is set out as a note under section 1320b–19 of this title.

CODIFICATION

Section was enacted as part of the Ticket to Work and Work Incentives Improvement Act of 1999, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 1320b–23. Pharmacy benefit managers transparency requirements

(a) Provision of information

A health benefits plan or any entity that provides pharmacy benefits management services on behalf of a health benefits plan (in this section referred to as a ''PBM'') that manages prescription drug coverage under a contract with—

(1) a PDP sponsor of a prescription drug plan or an MA organization offering an MA–PD plan under part D of subchapter XVIII; or

(2) a qualified health benefits plan offered through an exchange established by a State under section 18031 of this title,

shall provide the information described in subsection (b) to the Secretary and, in the case of a PBM, to the plan with which the PBM is under contract with, at such times, and in such form and manner, as the Secretary shall specify.

(b) Information described

The information described in this subsection is the following with respect to services provided by a health benefits plan or PBM for a contract year:

(1) The percentage of all prescriptions that were provided through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed (generic dispensing rate), by pharmacy type (which includes an independent pharmacy, chain pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public), that is paid by the health benefits plan or PBM under the contract.

(2) The aggregate amount, and the type of rebates, discounts, or price concessions (excluding bona fide service fees, which include but are not limited to distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative services agreements and patient care programs (such as medication compliance programs and patient education programs)) that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed.

(3) The aggregate amount of the difference between the amount the health benefits plan pays the PBM and the amount that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed.

(c) Confidentiality

Information disclosed by a health benefits plan or PBM under this section is confidential and shall not be disclosed by the Secretary or by a plan receiving the information, except that the Secretary may disclose the information in a form which does not disclose the identity of a specific PBM, plan, or prices charged for drugs, for the following purposes:

(1) As the Secretary determines to be necessary to carry out this section or part D of subchapter XVIII.

(2) To permit the Comptroller General to review the information provided.

(3) To permit the Director of the Congressional Budget Office to review the information provided.

(4) To States to carry out section 18031 of this title.

(d) Penalties

The provisions of subsection (b)(3)(C) of section 1396r–8 of this title shall apply to a health benefits plan or PBM that fails to provide information required under subsection (a) on a timely basis or that knowingly provides false information in the same manner as such provisions apply to a manufacturer with an agreement under that section.

(Aug. 14, 1935, ch. 531, title XI, § 1150A, as added Pub. L. 111–148, title VI, § 6005, Mar. 23, 2010, 124 Stat. 698.)

PRIOR PROVISIONS

A prior section 1320b–23 of this title, act Aug. 14, 1935, ch. 531, title XI, § 1150A, as added Pub. L. 106–553, § 1(a)(2) [title VI, § 635(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–115, which related to prohibition of certain misuses of social security numbers, was repealed by Pub. L. 106–554, § 1(a)(4) [div. A, § 213(a)(6), (b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–180, effective as if included in Pub. L. 106–553 on Dec. 21, 2000.

§ 1320b–24. Consultation with Tribal Technical Advisory Group

The Secretary of Health and Human Services shall maintain within the Centers for Medicaid & Medicare Services[1] (CMS) a Tribal Technical Advisory Group (TTAG), which was first established in accordance with requirements of the charter dated September 30, 2003, and the Secretary of Health and Human Services shall include in such Group a representative of a national urban Indian health organization and a representative of the Indian Health Service. The inclusion of a representative of a national urban Indian health organization in such Group shall not affect the nonapplication of the Federal Advisory Committee Act (5 U.S.C. App.) to such Group.

(Pub. L. 111–5, div. B, title V, § 5006(e)(1), Feb. 17, 2009, 123 Stat. 510.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and not as part of the Social Security Act which comprises this chapter.

§ 1320b–25. Reporting to law enforcement of crimes occurring in federally funded long-term care facilities

(a) Determination and notification

(1) Determination

The owner or operator of each long-term care facility that receives Federal funds under this chapter shall annually determine whether the facility received at least $10,000 in such Federal funds during the preceding year.

(2) Notification

If the owner or operator determines under paragraph (1) that the facility received at least $10,000 in such Federal funds during the preceding year, such owner or operator shall annually notify each covered individual (as defined in paragraph (3)) of that individual's obligation to comply with the reporting requirements described in subsection (b).

(3) Covered individual defined

In this section, the term ''covered individual'' means each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that is the subject of a determination described in paragraph (1).

(b) Reporting requirements

(1) In general

Each covered individual shall report to the Secretary and 1 or more law enforcement entities for the political subdivision in which the facility is located any reasonable suspicion of a crime (as defined by the law of the applicable political subdivision) against any individual who is a resident of, or is receiving care from, the facility.

(2) Timing

If the events that cause the suspicion—

(A) result in serious bodily injury, the individual shall report the suspicion immediately, but not later than 2 hours after forming the suspicion; and

(B) do not result in serious bodily injury, the individual shall report the suspicion not later than 24 hours after forming the suspicion.

(c) Penalties

(1) In general

If a covered individual violates subsection (b)—

(A) the covered individual shall be subject to a civil money penalty of not more than $200,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title).

(2) Increased harm

If a covered individual violates subsection (b) and the violation exacerbates the harm to the victim of the crime or results in harm to another individual—

(A) the covered individual shall be subject to a civil money penalty of not more than $300,000; and

(B) the Secretary may make a determination in the same proceeding to exclude the covered individual from participation in any Federal health care program (as defined in section 1320a–7b(f) of this title).

(3) Excluded individual

During any period for which a covered individual is classified as an excluded individual under paragraph (1)(B) or (2)(B), a long-term care facility that employs such individual shall be ineligible to receive Federal funds under this chapter.

(4) Extenuating circumstances

(A) In general

The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this subsection.

(B) Underserved population defined

In this paragraph, the term ''underserved population'' means the population of an area designated by the Secretary as an area with a shortage of elder justice programs or a population group designated by the Secretary as having a shortage of such programs. Such areas or groups designated by the Secretary may include—

[1] So in original. Probably should be ''Centers for Medicare & Medicaid Services''.

(i) areas or groups that are geographically isolated (such as isolated in a rural area);

(ii) racial and ethnic minority populations; and

(iii) populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

(d) Additional penalties for retaliation

(1) In general

A long-term care facility may not—

(A) discharge, demote, suspend, threaten, harass, or deny a promotion or other employment-related benefit to an employee, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee; or

(B) file a complaint or a report against a nurse or other employee with the appropriate State professional disciplinary agency because of lawful acts done by the nurse or employee,

for making a report, causing a report to be made, or for taking steps in furtherance of making a report pursuant to subsection (b)(1).

(2) Penalties for retaliation

If a long-term care facility violates subparagraph (A) or (B) of paragraph (1) the facility shall be subject to a civil money penalty of not more than $200,000 or the Secretary may classify the entity as an excluded entity for a period of 2 years pursuant to section 1320a–7(b) of this title, or both.

(3) Requirement to post notice

Each long-term care facility shall post conspicuously in an appropriate location a sign (in a form specified by the Secretary) specifying the rights of employees under this section. Such sign shall include a statement that an employee may file a complaint with the Secretary against a long-term care facility that violates the provisions of this subsection and information with respect to the manner of filing such a complaint.

(e) Procedure

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to a civil money penalty or exclusion under this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(f) Definitions

In this section, the terms ''elder justice'', ''long-term care facility'', and ''law enforcement'' have the meanings given those terms in section 1397j of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1150B, as added Pub. L. 111–148, title VI, § 6703(b)(3), Mar. 23, 2010, 124 Stat. 800.)

PART B—PEER REVIEW OF UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

§ 1320c. Purpose

The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1395y(g) of this title, including the definition of the quality improvement organizations with which the Secretary shall contract, the functions such quality improvement organizations are to perform, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1151, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 112–40, title II, § 261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c, act Aug. 14, 1935, ch. 531, title XI, § 1151, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1429; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(a), 95 Stat. 794, set out the Congressional declaration of purpose of former part B, in the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Pub. L. 112–40 substituted ''the quality improvement organizations'' for ''the utilization and quality control peer review organizations'' and ''such quality improvement organizations'' for ''such peer review organizations''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, § 261(e), Oct. 21, 2011, 125 Stat. 426, provided that: ''The amendments made by this section [amending this section and sections 1320c–1 to 1320c–5, 1320c–7, 1320c–9, 1320c–10, 1395g, 1395k, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395ff, 1395mm, 1395pp, and 1395ww of this title] shall apply to contracts entered into or renewed on or after January 1, 2012.''

EFFECTIVE DATE

Section 149 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: ''The amendments made by this subtitle [subtitle C (§§ 141–150) of title I of Pub. L. 97–248, enacting this part, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 150 [section 150 of Pub. L. 97–248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982].''

IOM STUDY OF QIOS

Pub. L. 108–173, title I, § 109(d), Dec. 8, 2003, 117 Stat. 2173, provided that:

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall request the Institute of Medicine of the National Academy of Sciences to conduct an evaluation of the program under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.]. The study shall include a review of the following:

''(A) An overview of the program under such part.

''(B) The duties of organizations with contracts with the Secretary under such part.

''(C) The extent to which quality improvement organizations improve the quality of care for medicare beneficiaries.

''(D) The extent to which other entities could perform such quality improvement functions as well as, or better than, quality improvement organizations.

''(E) The effectiveness of reviews and other actions conducted by such organizations in carrying out those duties.

''(F) The source and amount of funding for such organizations.

''(G) The conduct of oversight of such organizations.

''(2) REPORT TO CONGRESS.—Not later than June 1, 2006, the Secretary shall submit to Congress a report on the results of the study described in paragraph (1), including any recommendations for legislation.

''(3) INCREASED COMPETITION.—If the Secretary finds based on the study conducted under paragraph (1) that other entities could improve quality in the medicare program as well as, or better than, the current quality improvement organizations, then the Secretary shall provide for such increased competition through the addition of new types of entities which may perform quality improvement functions.''

COORDINATION OF PROs AND CARRIERS

Pub. L. 101–508, title IV, §4205(c), Nov. 5, 1990, 104 Stat. 1388–113, provided that:

''(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

''(A) the development of common utilization and medical review criteria;

''(B) criteria for the targetting of reviews by peer review organizations and carriers; and

''(C) improved methods for exchange of information among peer review organizations and carriers.

''(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.''

EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97–448, title III, §309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: ''In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 [sections 141–150 of Pub. L. 97–248] and part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as amended by such subtitle.''

MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS

Pub. L. 97–248, title I, §150, Sept. 3, 1982, 96 Stat. 395, as amended by Pub. L. 97–448, title III, §309(a)(9), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248], for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement with a professional standards review organization for a period of less than 12 months.

''(b) The provisions of part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as in effect prior to the amendments made by this subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [42 U.S.C. 1320c–11] after the end of such 30-day period.''

§ 1320c–1. Definition of quality improvement organization

The term ''quality improvement organization'' means an entity which—

(1) is able, as determined by the Secretary, to perform its functions under this part in a manner consistent with the efficient and effective administration of this part and subchapter XVIII;

(2) has at least one individual who is a representative of health care providers on its governing body; and

(3) has at least one individual who is a representative of consumers on its governing body.

(Aug. 14, 1935, ch. 531, title XI, §1152, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 99–509, title IX, §9353(b)(1), Oct. 21, 1986, 100 Stat. 2046; Pub. L. 112–40, title II, §261(a)(1), (2)(A), (C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c–1, act Aug. 14, 1935, ch. 531, title XI, §1152, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1430; amended Dec. 31, 1975, Pub. L. 94–182, title I, §§105, 108(a), 89 Stat. 1052, 1053; Oct. 25, 1977, Pub. L. 95–142, §5(a), (d)(2)(A), (B), (*o*)(1), 91 Stat. 1183, 1185, 1191; Dec. 5, 1980, Pub. L. 96–499, title IX, §921, 94 Stat. 2627; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2112(a)(2)(A), (B), 2113(b), (c), 95 Stat. 793, 794, related to the designation of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Pub. L. 112–40, §261(a)(2)(A), (C), substituted ''quality improvement'' for ''utilization and quality control peer review'' in section catchline and introductory provisions.

Pars. (1), (2). Pub. L. 112–40, §261(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c–2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

''(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c–3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and''.

1986—Par. (3). Pub. L. 99–509 added par. (3).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title IX, §9353(b)(2), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.''

§ 1320c–2. Contracts with quality improvement organizations

(a) Establishment of geographic areas

The Secretary shall establish throughout the United States such local, State, regional, national, or other geographic areas as the Secretary determines appropriate with respect to which contracts under this part will be made.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into contracts with one or more quality improvement organizations for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. In entering into contracts with such qualified organizations, the Secretary shall, to the extent appropriate, seek to ensure that each of the functions described in section 1320c–3(a) of this title are carried out within an area established under subsection (a). If more than one such qualified organization will be operating in an area, the Secretary shall ensure that there is no duplication of the functions carried out by such organizations within the area.

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part or the Secretary determines that there is a more qualified entity to perform one or more of the functions in section 1320c–3(a) of this title, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities.

(4) The Secretary may consider a variety of factors in selecting the contractors that the Secretary determines would provide for the most efficient and effective administration of this part, such as geographic location, size, and prior experience in health care quality improvement. Quality improvement organizations operating as of January 1, 2012, shall be allowed to compete for new contracts (as determined appropriate by the Secretary) along with other qualified organizations and are eligible for renewal of contracts for terms five years thereafter (as determined appropriate by the Secretary).

(c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform a function or functions under section 1320c–3 of this title directly or may subcontract for the performance of all or some of such function or functions (and for purposes of paragraphs (2) and (3) of subsection (b) of this section, a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of five years and shall be renewable for terms of five years thereafter;

(4) the Secretary shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(5) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made consistent with the Federal Acquisition Regulation.

In evaluating the performance of quality improvement organizations under contracts under this part, the Secretary shall place emphasis on

the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.

(d) Repealed. Pub. L. 112–40, title II, § 261(b)(3)(C), Oct. 21, 2011, 125 Stat. 424

(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a quality improvement organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to quality improvement organizations

The Secretary shall provide that fiscal intermediaries furnish to quality improvement organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c–3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Publication of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each quality improvement organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.

(Aug. 14, 1935, ch. 531, title XI, § 1153, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382; amended Pub. L. 97–448, title III, § 309(b)(2), Jan. 12, 1983, 96 Stat. 2408; Pub. L. 98–21, title VI, § 602(a), Apr. 20, 1983, 97 Stat. 163; Pub. L. 98–369, div. B, title III, §§ 2334(a), (b), 2347(c), July 18, 1984, 98 Stat. 1090, 1097; Pub. L. 99–272, title IX, §§ 9402(b), 9404(a), 9406(a), Apr. 7, 1986, 100 Stat. 200, 201; Pub. L. 99–509, title IX, § 9352(a)(1), Oct. 21, 1986, 100 Stat. 2044; Pub. L. 100–203, title IV, §§ 4091(a)(2)(A), (b)(1), (2), 4092(a), 4094(d)(1), Dec. 22, 1987, 101 Stat. 1330–134, 1330–135, 1330–137; Pub. L. 112–40, title II, § 261(a)(2)(A), (C), (b), (c)(1), Oct. 21, 2011, 125 Stat. 423, 425.)

PRIOR PROVISIONS

A prior section 1320c–2, act Aug. 14, 1935, ch. 531, title XI, § 1153, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432, related to review pending designation of a Professional Standards Review Organization in a given area, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Pub. L. 112–40, § 261(a)(2)(A), substituted ''quality improvement'' for ''utilization and quality control peer review'' in section catchline.

Subsec. (a). Pub. L. 112–40, § 261(b)(1)(A), added subsec. (a) and struck out former subsec. (a) which related to establishment and consolidation of geographic areas.

Subsec. (b)(1). Pub. L. 112–40, § 261(c)(1)(A), after first sentence, inserted ''In entering into contracts with such qualified organizations, the Secretary shall, to the extent appropriate, seek to ensure that each of the functions described in section 1320c–3(a) of this title are carried out within an area established under subsection (a).''

Pub. L. 112–40, § 261(b)(1)(B), substituted ''contracts with one or more quality improvement organizations'' for ''a contract with a quality improvement organization'' and ''will be operating in an area, the Secretary shall ensure that there is no duplication of the functions carried out by such organizations within the area'' for ''meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1(1)(A) of this title''.

Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement organization'' for ''utilization and quality control peer review organization''.

Subsec. (b)(2)(B). Pub. L. 112–40, § 261(b)(1)(C), which directed insertion of ''or the Secretary determines that there is a more qualified entity to perform one or more of the functions in section 1320c–3(a) of this title'' after ''under this part'', was executed by making the insertion after ''under this part'' the first place appearing, to reflect the probable intent of Congress.

Subsec. (b)(3)(A). Pub. L. 112–40, § 261(b)(1)(D)(i), struck out '', or association of such facilities,'' after ''facility''.

Subsec. (b)(3)(B). Pub. L. 112–40, § 261(b)(1)(D)(ii)(II), struck out ''or associations'' after ''one or more of such facilities''.

Pub. L. 112–40, § 261(b)(1)(D)(ii)(I), which directed striking out ''or association of such facilities'', was executed by striking out ''or association of facilities'' after ''facility'', to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 112–40, § 261(b)(3)(A), added par. (4).

Subsec. (c). Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''utilization and quality control peer review'' in concluding provisions.

Subsec. (c)(1). Pub. L. 112–40, § 261(c)(1)(B), substituted ''a function or functions under section 1320c–3 of this

title directly or may subcontract for the performance of all or some of such function or functions'' for ''the functions set forth in section 1320c–3(a) of this title, or may subcontract for the performance of all or some of such functions''.

Subsec. (c)(3). Pub. L. 112–40, § 261(b)(2), substituted ''five years and shall be renewable for terms of five years'' for ''three years and shall be renewable on a triennial basis''.

Subsec. (c)(4). Pub. L. 112–40, § 261(b)(3)(B), redesignated par. (7) as (4) and struck out former par. (4) which read as follows: ''if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;''.

Subsec. (c)(5). Pub. L. 112–40, § 261(b)(4), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.''

Pub. L. 112–40, § 261(b)(3)(B), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''the organization may terminate the contract upon 90 days notice to the Secretary;''.

Subsec. (c)(6) to (8). Pub. L. 112–40, § 261(b)(3)(B), redesignated pars. (7) and (8) as (4) and (5), respectively, and struck out former par. (6) which read as follows: ''the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

''(A) the organization does not substantially meet the requirements of section 1320c–1 of this title; or

''(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d) of this section;''.

Subsec. (d). Pub. L. 112–40, § 261(b)(3)(C), struck out subsec. (d) which related to panel review prior to termination of contract.

Subsecs. (e)(2), (g), (h)(3). Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''peer review''.

Subsec. (i). Pub. L. 112–40, § 261(b)(1)(E), struck out subsec. (i) which related to preference in contracting with in-State organizations.

1987—Subsec. (c). Pub. L. 100–203, § 4094(d)(1), inserted after and below par. (8) the following: ''In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.''

Subsec. (c)(3). Pub. L. 100–203, § 4091(a)(2)(A), substituted ''three'' for ''two'' and ''triennial'' for ''biennial''.

Subsec. (e). Pub. L. 100–203, § 4091(b)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), contracting'' for ''Contracting'', and added par. (2).

Subsec. (h). Pub. L. 100–203, § 4091(b)(1), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4092(a), added subsec. (i).

1986—Subsec. (b)(2)(A). Pub. L. 99–272, § 9404(a), substituted ''consists only of members of the governing board'' for ''consists only of one individual member of the governing board''.

Subsec. (c)(8). Pub. L. 99–272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''reimbursement shall be made to the organization in accordance with the terms of the contract.''

Subsec. (d)(4). Pub. L. 99–272, § 9406(a), added par. (4).

Subsec. (g). Pub. L. 99–509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98–369, § 2347(c)(1), substituted ''Prior to November 15, 1984'' for ''During the first twelve months in which the Secretary is entering into contracts under this section''.

Pub. L. 98–369, § 2334(b), inserted ''(other than a self-insured employer)'' and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98–369, § 2347(c)(2), substituted ''after November 14, 1984'' for ''after the expiration of the twelve-month period referred to in subparagraph (A)''.

Subsec. (b)(2)(C). Pub. L. 98–369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98–369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98–21 added subpar. (C).

Subsec. (d). Pub. L. 97–448 substituted reference to ''subsection (c)(6)(B)'' for ''subsection (c)(5)(B)'' and ''subsection (c)(5)(C)'' in pars. (1) and (2), respectively.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, § 4091(a)(2)(B), Dec. 22, 1987, 101 Stat. 1330–134, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Pub. L. 100–203, title IV, § 4091(b)(3), Dec. 22, 1987, 101 Stat. 1330–135, provided that: ''The amendment made by paragraphs (1) and (2) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].''

Pub. L. 100–203, title IV, § 4092(b), Dec. 22, 1987, 101 Stat. 1330–135, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act [Dec. 22, 1987].''

Pub. L. 100–203, title IV, § 4094(d)(2), Dec. 22, 1987, 101 Stat. 1330–137, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Pub. L. 99–509, title IX, § 9352(c)(1), Oct. 21, 1986, 100 Stat. 2044, provided that: ''The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section and section 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986].''

Pub. L. 99–272, title IX, § 9402(c)(2), Apr. 7, 1986, 100 Stat. 200, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Pub. L. 99–272, title IX, § 9404(b), Apr. 7, 1986, 100 Stat. 201, provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Pub. L. 99–272, title IX, § 9406(b), Apr. 7, 1986, 100 Stat. 201, provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. B, title III, § 2334(c), July 18, 1984, 98 Stat. 1090, provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Pub. L. 98–369, div. B, title III, § 2347(d), July 18, 1984, 98 Stat. 1097, provided that: ''The provisions of, and amendments made by, this section [amending this section and section 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EXTENSIONS OF PEER REVIEW CONTRACT PERIOD; ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES

Pub. L. 100–203, title IV, § 4091(a)(1), Dec. 22, 1987, 101 Stat. 1330–134, as amended by Pub. L. 100–360, title IV, § 411(j)(1), July 1, 1988, 102 Stat. 790, provided that:

''(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review [now ''quality improvement''] organizations under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act [42 U.S.C. 1320c–2(c)], the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

''(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act [Dec. 22, 1987].''

§ 1320c–3. Functions of quality improvement organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Subject to subsection (b), any quality improvement organization entering into a contract with the Secretary under this part must perform one or more of the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title, to Medicare Advantage organizations pursuant to contracts under part C,[1] and to prescription drug sponsors pursuant to contracts under part D[1]) for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

(A) such payment is allowed by reason of section 1395pp of this title;

(B) in the case of inpatient hospital services or extended care services, the quality improvement organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1395pp of this title) that payment would not otherwise be made for such services under subchapter XVIII of this chapter prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1320c–4 of this title; or

(D) such payment is authorized under section 1395x(v)(1)(G) of this title.

The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.

[1] See References in Text note below.

(3)(A) Subject to subparagraphs (B) and (D), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter of such determination.

(B) The notification under subparagraph (A) with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1) shall not occur until 20 days after the date that the organization has—

(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

(C) The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1320c–4 of this title).

(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1320c–4 of this title, and

(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1320c–4 of this title, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

(E)(i) In the case of services and items provided by a physician that were disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: ''In the judgment of the quality improvement organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician.''

(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term ''physician'' in the notice described in clause (i).

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. Each quality improvement organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a risk-sharing contract under section 1395mm of this title (or that is subject to review under section 1395ss(t)(3) of this title) for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization. The previous two sentences shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1395x(r)(1) of this title) and with representatives of institutional and noninstitu-

tional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

(6)(A) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

(i) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(ii) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(B) The organization shall—

(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under subchapter XVIII of this chapter, and

(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A)(i) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry, optometry, and podiatry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization; and

(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).[2]

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

(9)(A) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1320c–9 of this title.

(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1320c–5(a) of this title and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1320c–5(b)(1) of this title, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate pub-

[2] So in original. The period probably should be a semicolon.

lic and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1395h and 1395u of this title;

(B) other quality improvement organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(12) As part of the organization's review responsibility under paragraph (1), the organization shall review all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary, a sample of such procedures.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an ''early readmission case'' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(15) During each year of the contract entered into under section 1320c–2(b) of this title, the organization shall perform on-site review activities as the Secretary determines appropriate.

(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1395dd(d)(3) of this title. The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.

(17) The organization shall execute its responsibilities under subparagraphs (A) and (B) of paragraph (1) by offering to providers, practitioners, Medicare Advantage organizations offering Medicare Advantage plans under part C,[3] and prescription drug sponsors offering prescription drug plans under part D[3] quality improvement assistance pertaining to prescription drug therapy. For purposes of this part and subchapter XVIII of this chapter, the functions described in this paragraph shall be treated as a review function.

(18) The organization shall perform, subject to the terms of the contract, such other activities as the Secretary determines may be necessary for the purposes of improving the quality of care furnished to individuals with respect to items and services for which payment may be made under subchapter XVIII.

(b) Performance; exceptions

A quality improvement organization entering into a contract with the Secretary to perform a function described in a paragraph under subsection (a) must perform all of the activities described in such paragraph, except to the extent otherwise negotiated with the Secretary pursuant to the contract or except for a function for which the Secretary determines it is not appropriate for the organization to perform, such as a function that could cause a conflict of interest with another function.

(c) Review by physicians; physician's family defined

(1) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services; or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(d) Utilization of services of physicians to make final determinations of denial decisions with respect to professional conduct of other physicians

No quality improvement organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry, or any act performed by any duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry in the exercise of his profession.

(e) Review of hospital denial notices

(1) If—

[3] See References in Text note below.

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.

(2) to (4) Repealed. Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543.

(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist quality improvement organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

(Aug. 14, 1935, ch. 531, title XI, § 1154, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 385; amended Pub. L. 97–448, title III, § 309(b)(3), (4), Jan. 12, 1983, 96 Stat. 2408, 2409; Pub. L. 99–272, title IX, §§ 9307(b), 9401(a), 9403(a), 9405(a), Apr. 7, 1986, 100 Stat. 193, 196, 200, 201; Pub. L. 99–509, title IX, §§ 9343(d), 9351(a), 9352(b), 9353(a)(1)–(3), (c)(1), Oct. 21, 1986, 100 Stat. 2040, 2043, 2044–2047; Pub. L. 100–203, title IV, §§ 4039(h)(3), (4), 4093(a), 4094(a)–(c)(1)(A), (2)(A), (B), 4096(c), Dec. 22, 1987, 101 Stat. 1330–135 to 1330–137, 1330–139, as amended Pub. L. 100–360, title IV, § 411(e)(3), (j)(3)(A), July 1, 1988, 102 Stat. 775, 791; Pub. L. 100–360, title II, § 203(d)(2), title IV, § 411(j)(2), (3)(B), (4)(C), July 1, 1988, 102 Stat. 724, 775, 791; Pub. L. 100–485, title VI, § 608(d)(25)(B), Oct. 13, 1988, 102 Stat. 2421; Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981; Pub. L. 101–239, title VI, § 6224(a)(1), (b)(1), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 101–508, title IV, §§ 4205(b)(1), (d)(1)(A), (g)(1)(A), (2)(A), 4207(a)(1)(B), formerly 4027(a)(1)(B), 4358(b)(3), Nov. 5, 1990, 104 Stat. 1388–113 to 1388–115, 1388–117, 1388–137; Pub. L. 103–432, title I, §§ 156(a)(2)(A), (b)(2)(A), 160(d)(4), 171(h)(2), Oct. 31, 1994, 108 Stat. 4440, 4441, 4444, 4450; Pub. L. 106–554, § 1(a)(6) [title V, § 521(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543; Pub. L. 108–173, title I, § 109(a), (b), title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2173, 2426; Pub. L. 112–40, title II, § 261(a)(2)(B), (C), (c)(2), (d), Oct. 21, 2011, 125 Stat. 423, 425.)

PRIOR PROVISIONS

A prior section 1320c–3, act Aug. 14, 1935, ch. 531, title XI, § 1154, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432; amended Oct. 25, 1977, Pub. L. 95–142, § 5(b), (d)(2)(C), 91 Stat. 1184, 1186; Dec. 5, 1980, Pub. L. 96–499, title IX, § 924(a), 94 Stat. 2628; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2112(a)(1), (2)(B), (b), 2113(c), 2121(e), 95 Stat. 793, 794, 796, related to trial period for Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Pub. L. 112–40, § 261(a)(2)(B), substituted ''quality improvement'' for ''peer review'' in section catchline.

Subsec. (a). Pub. L. 112–40, § 261(a)(2)(C), (c)(2)(A)(i), in introductory provisions, substituted ''Subject to subsection (b), any quality improvement'' for ''Any utilization and quality control peer review'' and inserted ''one or more of'' before ''the following functions''.

Subsec. (a)(2)(B), (3)(E)(i), (4)(A). Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''peer review''.

Subsec. (a)(4)(C). Pub. L. 112–40, § 261(c)(2)(A)(ii), struck out subpar. (C) which related to State-by-State competitive procurement procedures for review of quality of health care services and required certain contractual terms.

Subsec. (a)(10)(B). Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''peer review''.

Subsec. (a)(12). Pub. L. 112–40, § 261(c)(2)(A)(iii), added par. (12).

Subsec. (a)(15). Pub. L. 112–40, § 261(c)(2)(A)(iv), substituted ''on-site review activities as the Secretary determines appropriate'' for ''significant on-site review activities, including on-site review in at least 20 percent of the rural hospitals in the organization's area''.

Subsec. (a)(18). Pub. L. 112–40, § 261(d), added par. (18).

Subsec. (b). Pub. L. 112–40, § 261(c)(2)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 112–40, § 261(c)(2)(B), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''utilization and quality control peer review''.

Subsec. (d). Pub. L. 112–40, § 261(c)(2)(B), redesignated subsec. (c) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary a sample of such procedures.''

Subsec. (f). Pub. L. 112–40, § 261(a)(2)(C), substituted ''quality improvement'' for ''peer review''.

2003—Subsec. (a)(1). Pub. L. 108–173, § 109(a), inserted '', to Medicare Advantage organizations pursuant to contracts under part C, and to prescription drug sponsors pursuant to contracts under part D'' after ''under section 1395mm of this title''.

Subsec. (a)(17). Pub. L. 108–173, § 109(b), added par. (17).

Subsec. (e)(5). Pub. L. 108–173, § 948(d), struck out par. (5) which read as follows: ''In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).''

2000—Subsec. (e)(2) to (4). Pub. L. 106–554 struck out pars. (2) to (4), which had: in par. (2), authorized peer review organization review of validity of hospital's determination that a patient no longer required inpatient hospital care but attending physician had not agreed with the hospital's determination; in par. (3), authorized review of the determination where patient or patient's representative had received a notice under par. (1) and requested the review; and in par. (4), directed that hospital could not charge patient for inpatient services furnished before noon of the day after the date the patient or representative received notice of the decision where request for review had been made not later than noon of the first working day after notice under par. (1) had been received and section 1395pp(a)(2) conditions had been met.

1994—Subsec. (a)(4)(B). Pub. L. 103–432, § 171(h)(2), substituted ''(or that is subject to review under section 1395ss(t)(3) of this title)'' for ''(or subject to review under section 1395ss(t) of this title)''.

Subsec. (a)(9)(B). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for

the licensing or disciplining of the physician of its finding and decision.''

Subsec. (a)(12). Pub. L. 103–432, §156(a)(2)(A)(i), struck out par. (12) which read as follows: ''The organization shall perform the review, referral, and other functions required under section 1320c–13 of this title.''

Subsec. (d). Pub. L. 103–432, §156(a)(2)(A)(ii), struck out ''(and except as provided in section 1320c–13 of this title)'' after ''discretion of the Secretary''.

1990—Subsec. (a)(2). Pub. L. 101–508, §4205(g)(2)(A), inserted third sentence and struck out former third sentence which read as follows: ''Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.''

Subsec. (a)(3)(E). Pub. L. 101–508, §4205(g)(1)(A), designated existing provisions as cl. (i), inserted ''provided by a physician that were'' after ''items'', substituted ''physician.'' for ''physician and hospital.'', and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–508, §4358(b)(3), inserted ''(or subject to review under section 1395ss(t) of this title)'' after ''section 1395mm of this title'' in first sentence.

Subsec. (a)(7)(A)(i). Pub. L. 101–508, §4205(b)(1)(A), inserted '', optometry, and podiatry'' after ''dentistry''.

Subsec. (a)(9). Pub. L. 101–508, §4205(d)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(16). Pub. L. 101–508, §4207(a)(1)(B), formerly §4027(a)(1)(B), as renumbered by Pub. L. 103–432, §160(d)(4), added par. (16).

Subsec. (c). Pub. L. 101–508, §4205(b)(1)(B), substituted ''dentistry, optometry, or podiatry'' for ''or dentistry'' in three places.

1989—Subsec. (a)(1). Pub. L. 101–239, §6224(a)(1), inserted at end ''If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.''

Subsec. (a)(3)(A). Pub. L. 101–239, §6224(b)(1)(A), substituted ''subparagraphs (B) and (D)'' for ''subparagraph (B)''.

Subsec. (a)(3)(B). Pub. L. 101–239, §6224(b)(1)(B), inserted ''with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1)'' after ''under subparagraph (A)''.

Subsec. (a)(3)(D), (E). Pub. L. 101–239, §6224(b)(1)(C), added subpars. (D) and (E).

Subsec. (a)(16). Pub. L. 101–234, repealed Pub. L. 100–360, §203(d)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(3)(C). Pub. L. 100–360, §411(j)(2), designated last sentence of par. (3) as subpar. (C).

Subsec. (a)(4). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(3), see 1987 Amendment note below.

Subsec. (a)(6). Pub. L. 100–360, §411(j)(3)(A), made technical amendment to directory language of Pub. L. 100–203, §4094(a), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, §411(j)(3)(B), substituted ''review in at least'' for ''review at at least''.

Subsec. (a)(16). Pub. L. 100–360, §203(d)(2), added par. (16) which related to review of home intravenous drug therapy services.

Subsec. (d). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(4), see 1987 Amendment note below.

Subsec. (e)(3)(A)(i). Pub. L. 100–360, §411(j)(4)(C), as amended by Pub. L. 100–485, §608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)''.

Subsec. (e)(3)(B). Pub. L. 100–360, §411(j)(4)(C), as amended by Pub. L. 100–485, §608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)'' in introductory provisions.

1987—Subsec. (a)(3). Pub. L. 100–203, §4093(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider, such patient, and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.''

Subsec. (a)(4). Pub. L. 100–203, §4039(h)(3), as added by Pub. L. 100–360, §411(e)(3), realigned margins for subpars. (B) and (C) and cls. (i) to (iii) of subpar. (C), in subpar. (B), substituted ''risk sharing contract under section 1395mm'' for ''contract under section 1395mm'', and in subpar. (C), inserted ''(other than the ability to perform review functions under this section that are not described in subparagraph (B))''.

Subsec. (a)(4)(B). Pub. L. 100–203, §4094(c)(2)(A), inserted before period at end of first sentence ''and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization'' and substituted ''previous two sentences'' for ''previous sentence'' in penultimate sentence.

Subsec. (a)(6). Pub. L. 100–203, §4094(c)(1)(A), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Pub. L. 100–203, §4094(a), as amended by Pub. L. 100–360, §411(j)(3)(A), inserted after and below subpar. (A) the following: ''As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.''

Subsec. (a)(7)(A). Pub. L. 100–203, §4094(c)(2)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15). Pub. L. 100–203, §4094(b), added par. (15).

Subsec. (d). Pub. L. 100–203, §4039(h)(4), as added by Pub. L. 100–360, §411(e)(3), substituted ''1320c–13 of this title'' for ''1320c–13(b)(4) of this title''.

Subsec. (e)(2). Pub. L. 100–203, §4096(c)(1), inserted provision at end requiring hospital to notify patient if it has requested a review.

Subsec. (e)(3)(A)(i), (B). Pub. L. 100–203, §4096(c)(2), inserted ''or (2)'' after ''paragraph (1)''.

1986—Subsec. (a)(1). Pub. L. 99–509, §9343(d)(1), inserted ''and subject to the requirements of subsection (d) of this section'' after ''subject to the terms of the contract'' in introductory provisions.

Pub. L. 99–272, §9405(a), inserted ''(including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title)'' after ''subchapter XVIII of this chapter'' in introductory provisions.

Subsec. (a)(2). Pub. L. 99–272, §9403(a), in introductory provisions substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (C)'', and following subpar. (D) inserted provision that determinations that payment should not be made by reason of subpar. (B) of

par. (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

Subsec. (a)(4)(A). Pub. L. 99–509, § 9353(a)(1), inserted at end ''Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.''

Pub. L. 99–509, § 9353(a)(2)(A), inserted ''(A)'' after ''(4)''.

Subsec. (a)(4)(B). Pub. L. 99–509, § 9353(a)(2)(C), inserted at end ''Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.''

Pub. L. 99–509, § 9353(a)(2)(B), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 99–509, § 9353(a)(2)(D), added subpar. (C).

Subsec. (a)(8). Pub. L. 99–272, § 9307(b), inserted ''or as may be required to carry out section 1395y(a)(15) of this title'' before the period at end.

Subsec. (a)(12). Pub. L. 99–272, § 9401(a), added par. (12).

Subsec. (a)(13). Pub. L. 99–509, § 9352(b), added par. (13).

Subsec. (a)(14). Pub. L. 99–509, § 9353(c)(1), added par. (14).

Subsec. (d). Pub. L. 99–509, § 9343(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 99–509, § 9351(a), added subsec. (e).

Subsec. (f). Pub. L. 99–509, § 9353(a)(3), added subsec. (f).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, § 309(b)(3), substituted ''and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title'' for ''or otherwise allowable under section 1395y(a)(1) of this title''.

Subsec. (a)(2)(B). Pub. L. 97–448, § 309(b)(4), struck out ''posthospital'' before ''extended care services''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title I, § 109(c), Dec. 8, 2003, 117 Stat. 2173, provided that: ''The amendments made by this section [amending this section] shall apply on and after January 1, 2004.''

Pub. L. 108–173, title IX, § 948(d), Dec. 8, 2003, 117 Stat. 2426, provided that the amendment made by section 948(d) is effective as if included in the enactment of section 521(c) of BIPA (the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted by section 1(a)(6) of Pub. L. 106–554).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(6) [title V, § 521(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–543, provided that: ''The amendments made by this section [amending this section and sections 1395w–22 and 1395ff of this title] shall apply with respect to initial determinations made on or after October 1, 2002.''

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–432, title I, § 156(a)(3), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendments made by this subsection [amending this section and sections 1395*l*, 1395m, 1395y, and 1395cc of this title and repealing section 1320c–13 of this title] shall apply to services provided on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 171(h)(2) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title IV, § 4205(b)(2), Nov. 5, 1990, 104 Stat. 1388–113, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–508, title IV, § 4205(d)(1)(C), Nov. 5, 1990, 104 Stat. 1388–114, provided that: ''The amendments made by this paragraph [amending this section and section 1320c–9 of this title] shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–508, title IV, § 4205(g)(1)(B), Nov. 5, 1990, 104 Stat. 1388–115, provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconiliation [sic] Act of 1989 [Pub. L. 101–239].''

Pub. L. 101–508, title IV, § 4205(g)(2)(B), Nov. 5, 1990, 104 Stat. 1388–115, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Pub. L. 101–508, title IV, § 4207(a)(1)(C), formerly § 4027(a)(1)(C), Nov. 5, 1990, 104 Stat. 1388–117, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by subparagraph (A) [amending section 1395dd of this title] shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]. The amendment made by subparagraph (B) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.''

Pub. L. 101–508, title IV, § 4358(c), Nov. 5, 1990, 104 Stat. 1388–137, as amended by Pub. L. 103–432, title I, § 172(a), Oct. 31, 1994, 108 Stat. 4452; Pub. L. 104–18, § 1, July 7, 1995, 109 Stat. 192, provided that:

''(1) The amendments made by this section [amending this section and section 1395ss of this title] shall only apply—

''(A) in 15 States (as determined by the Secretary of Health and Human Services) and such other States as elect such amendments to apply to them, and

''(B) subject to paragraph (2), during the 6½-year period beginning with 1992.

For purposes of this paragraph, the term 'State' has the meaning given such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

''(2)(A) The Secretary of Health and Human Services shall conduct a study that compares the health care costs, quality of care, and access to services under medicare select policies with that under other medicare supplemental policies. The study shall be based on surveys of appropriate age-adjusted sample populations. The study shall be completed by June 30, 1997.

''(B) Not later than December 31, 1997, the Secretary shall determine, based on the results of the study under subparagraph (A), if any of the following findings are true:

''(i) The amendments made by this section have not resulted in savings of premium costs to those enrolled in medicare select policies (in comparison to their enrollment in medicare supplemental policies

that are not medicare select policies and that provide comparable coverage).

''(ii) There have been significant additional expenditures under the medicare program as a result of such amendments.

''(iii) Access to and quality of care has been significantly diminished as a result of such amendments.

''(C) The amendments made by this section shall remain in effect beyond the 6½-year period described in paragraph (1)(B) unless the Secretary determines that any of the findings described in clause (i), (ii), or (iii) of subparagraph (B) are true.

''(3) The Comptroller General shall conduct a study to determine the extent to which individuals who are continuously covered under a medicare supplemental policy are subject to medical underwriting if they change the policy under which they are covered, and to identify options, if necessary, for modifying the medicare supplemental insurance market to make sure that continuously insured beneficiaries are able to switch plans without medical underwriting. By not later than June 30, 1996, the Comptroller General shall submit to the Congress a report on the study. The report shall include a description of the potential impact on the cost and availability of medicare supplemental policies of each option identified in the study.''

[Pub. L. 103–432, title I, §172(b), Oct. 31, 1994, 108 Stat. 4452, provided that: ''The amendment made by subsection (a) [amending section 4358(c) of Pub. L. 101–508, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].'']

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VI, §6224(a)(2), Dec. 19, 1989, 103 Stat. 2257, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into after the date of the enactment of this Act [Dec. 19, 1989].''

Pub. L. 101–239, title VI, §6224(b)(3), Dec. 19, 1989, 103 Stat. 2257, provided that: ''The amendments made by this subsection [amending this section and section 1320c–4 of this title] shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act [42 U.S.C. 1320c–3(a)(3)(B)] more than 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

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.

Pub. L. 100–360, title II, §203(g), July 1, 1988, 102 Stat. 725, which had provided that the amendments made by section 203 of Pub. L. 100–360 (amending this section and sections 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title) were to apply to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (j)(2), (3), (4)(C) of 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 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, §4093(b), Dec. 22, 1987, 101 Stat. 1330–136, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made on or after April 1, 1988.''

Pub. L. 100–203, title IV, §4094(c)(1)(B), Dec. 22, 1987, 101 Stat. 1330–137, provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] entered into or renewed more than 6 months after the date of the enactment of this Act [Dec. 22, 1987].''

Pub. L. 100–203, title IV, §4094(c)(2)(C), Dec. 22, 1987, 101 Stat. 1330–137, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Pub. L. 100–203, title IV, §4096(d), Dec. 22, 1987, 101 Stat. 1330–140, provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395gg, and 1395pp of this title] shall apply to services furnished on or after January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 9343(d) of Pub. L. 99–509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Pub. L. 99–509, title IX, §9351(b), Oct. 21, 1986, 100 Stat. 2044, provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986].

''(2) Section 1154(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Pub. L. 99–509, title IX, §9352(c)(2), Oct. 21, 1986, 100 Stat. 2044, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.''

Pub. L. 99–509, title IX, §9353(a)(6), Oct. 21, 1986, 100 Stat. 2046, as amended by Pub. L. 100–203, title IV, §4039(h)(9)(A), (B), as added Pub. L. 100–360, title IV, §411(e)(3), July 1, 1988, 102 Stat. 776, provided that:

''(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.

''(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

''(B) The amendments made by paragraphs (2)(B) and (2)(D) [amending this section] shall apply to contracts as of April 1, 1987.

''(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

''(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986].''

Pub. L. 99–509, title IX, §9353(c)(2), Oct. 21, 1986, 100 Stat. 2047, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act [Oct. 21, 1986].''

Pub. L. 99–272, title IX, §9307(e), Apr. 7, 1986, 100 Stat. 194, provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395y of this title] shall apply to services performed on or after April 1, 1986.''

Pub. L. 99–272, title IX, § 9401(d), Apr. 7, 1986, 100 Stat. 200, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] that are in effect on that date as may be necessary to effect these amendments on a timely basis.''

Pub. L. 99–272, title IX, § 9403(c), Apr. 7, 1986, 100 Stat. 200, provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Pub. L. 99–272, title IX, § 9405(b), Apr. 7, 1986, 100 Stat. 201, as amended by Pub. L. 99–509, title IX, § 9353(a)(5), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The amendment made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

REVIEW AND ANALYSIS OF VARIATIONS IN UTILIZATION OF HOSPITAL AND OTHER HEALTH CARE SERVICES

Pub. L. 99–509, title IX, § 9353(a)(4), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.], data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [42 U.S.C. 1395 et seq.].''

§ 1320c–4. Right to hearing and judicial review

Any beneficiary who is entitled to benefits under subchapter XVIII of this chapter, and, subject to section 1320c–3(a)(3)(D) of this title, any practitioner or provider, who is dissatisfied with a determination made by a contracting quality improvement organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination by the reviewing organization. Where the reconsideration is adverse to the beneficiary and where the matter in controversy is $200 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.

(Aug. 14, 1935, ch. 531, title XI, § 1155, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 388; amended Pub. L. 101–239, title VI, § 6224(b)(2), Dec. 19, 1989, 103 Stat. 2257; Pub. L. 103–296, title I, § 108(b)(14), Aug. 15, 1994, 108 Stat. 1485; Pub. L. 112–40, title II, § 261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c–4, act Aug. 14, 1935, ch. 531, title XI, § 1155, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1433; amended Oct. 25, 1977, Pub. L. 95–142, § 5(c)(1), (d)(3), (*o*)(2), (p), 91 Stat. 1184, 1188, 1191, 1192; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 924(b)–(d), 925–927(a), 931(g), 94 Stat. 2629, 2630, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2111, 2113(d), 2121(f), 95 Stat. 793, 794, 796, related to functions and duties of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Pub. L. 112–40 substituted ''quality improvement'' for ''peer review''.

1994—Pub. L. 103–296 substituted ''(to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.'' for ''(to the same extent as is provided in section 405(b) of this title), and, where the amount in controversy is $2,000 or more, to judicial review of the Secretary's final decision.''

1989—Pub. L. 101–239 inserted '', subject to section 1320c–3(a)(3)(D) of this title,'' before ''any practitioner or provider''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1320c–3(a)(3)(B) of this title more than 30 days after Dec. 19, 1989, see section 6224(b)(3) of Pub. L. 101–239, set out as a note under section 1320c–3 of this title.

§ 1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review

(a) Assurances regarding services and items ordered or provided by practitioner or provider

It shall be the obligation of any health care practitioner and any other person (including a

hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this chapter, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this chapter—

(1) will be provided economically and only when, and to the extent, medically necessary;

(2) will be of a quality which meets professionally recognized standards of health care; and

(3) will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing quality improvement organization in the exercise of its duties and responsibilities.

(b) Sanctions and penalties; hearings and review

(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan, any organization having a contract with the Secretary under this part determines that such practitioner or person has—

(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe, except that such period may not be less than 1 year) such practitioner or person from eligibility to provide services under this chapter on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title, and shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays[1] to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of up to $10,000 for each instance of the medically improper or unnecessary services so provided. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health professional shortage area or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 405(b) of this title) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this chapter, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).

(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.

(c) Enlistment of support of other organizations to assure practitioner's or provider's compliance with obligations

It shall be the duty of each quality improvement organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a) of this section) providing health care services in such area shall comply with all obligations imposed on him under subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, §1156, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat.

[1] So in original. Probably should be ''pay''.

388; amended Pub. L. 100–93, § 6, Aug. 18, 1987, 101 Stat. 691; Pub. L. 100–203, title IV, § 4095(a), Dec. 22, 1987, 101 Stat. 1330–138; Pub. L. 100–203, title IV, § 4039(h)(5), Dec. 22, 1987, as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 775; Pub. L. 101–508, title IV, § 4205(a)(1), (d)(2)(A), Nov. 5, 1990, 104 Stat. 1388–112, 1388–114; Pub. L. 101–597, title IV, § 401(c)(1), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 103–432, title I, § 156(b)(1), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 104–191, title II, §§ 214, 231(f), Aug. 21, 1996, 110 Stat. 2005, 2014; Pub. L. 112–40, title II, § 261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c–5, act Aug. 14, 1935, ch. 531, title XI, § 1156, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1435, provided for development of norms of health care services by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Subsec. (a)(3). Pub. L. 112–40 substituted ''quality improvement'' for ''peer review''.

Subsec. (c). Pub. L. 112–40 substituted ''quality improvement'' for ''utilization and quality control peer review''.

1996—Subsec. (b)(1). Pub. L. 104–191, § 214(b)(2), struck out in concluding provisions ''In determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.'' after ''chapter on a reimbursable basis.''

Pub. L. 104–191, § 214(b)(1), struck out in concluding provisions ''and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations,'' after ''agrees with such determination,''.

Pub. L. 104–191, § 214(a)(1), substituted ''may prescribe, except that such period may not be less than 1 year)'' for ''may prescribe)'' in concluding provisions.

Subsec. (b)(2). Pub. L. 104–191, § 214(a)(2), substituted ''shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain'' for ''shall remain''.

Subsec. (b)(3). Pub. L. 104–191, § 231(f), substituted ''up to $10,000 for each instance'' for ''the actual or estimated cost''.

1994—Subsec. (b)(1). Pub. L. 103–432 substituted ''whether'' for ''whehter'' in third sentence.

1990—Subsec. (b)(1). Pub. L. 101–508, § 4205(a)(1), inserted ''and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan,'' after ''concerned,'' in introductory provisions and inserted after second sentence ''In determining whehter [sic] a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.''

Subsec. (b)(5). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area (HMSA)''.

Subsec. (b)(6). Pub. L. 101–508, § 4205(d)(2)(A), added par. (6).

1988—Subsec. (b). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(5), see 1987 Amendment notes below.

1987—Subsec. (a). Pub. L. 100–93, § 6(1), substituted ''this chapter'' for ''subchapter XVIII of this chapter'' and ''this subchapter''.

Subsec. (b)(1). Pub. L. 100–203, § 4039(h)(5)(A), as added by Pub. L. 100–360, substituted ''services under this chapter'' for ''such services''.

Pub. L. 100–93, § 6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(2). Pub. L. 100–203, § 4039(h)(5)(B), as added by Pub. L. 100–360, substituted ''on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title'' for ''at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in this chapter with respect to terminations of provider agreements)''.

Pub. L. 100–93, § 6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(5). Pub. L. 100–203 added par. (5).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 214 of Pub. L. 104–191 effective Jan. 1, 1997, except as otherwise provided, see section 218 of Pub. L. 104–191, set out as a note under section 1320a–7 of this title.

Amendment by section 231(f) of Pub. L. 104–191 applicable to acts or omissions occurring on or after Jan. 1, 1997, see section 231(i) of Pub. L. 104–191, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 156(b)(6)(A) of Pub. L. 103–432, set out as a note under section 1320c–9 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title IV, § 4205(a)(2), Nov. 5, 1990, 104 Stat. 1388–113, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to initial determinations made by organizations on or after the date of the enactment of this Act [Nov. 5, 1990].''

Pub. L. 101–508, title IV, § 4205(d)(2)(B), Nov. 5, 1990, 104 Stat. 1388–114, as amended by Pub. L. 103–432, title I, § 156(b)(3), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by this paragraph [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IV, § 4095(b), Dec. 22, 1987, 101 Stat. 1330–138, provided that: ''The amendment made by

subsection (a) [amending this section] shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act [42 U.S.C. 1320c–5(b)] on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

TELECOMMUNICATIONS DEMONSTRATION PROJECTS

Pub. L. 100–203, title IV, §4094(e), Dec. 22, 1987, 101 Stat. 1330–138, as amended by Pub. L. 100–360, title IV, §411(j)(3)(C), as added by Pub. L. 100–485, title VI, §608(d)(25)(A), Oct. 13, 1988, 102 Stat. 2421, provided that: ''The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title [probably means title XI of the Social Security Act, 42 U.S.C. 1301 et seq.]. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.''

PREEXCLUSION HEARINGS; TRANSITION FOR CURRENT CASES AND REDETERMINATION IN CERTAIN CASES

Pub. L. 100–203, title IV, §4095(c), (d), Dec. 22, 1987, 101 Stat. 1330–138, provided that:

''(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

''(1) for whom a notice of determination under section 1156(b) of the Social Security Act [42 U.S.C. 1320c–5(b)] has been provided within 365 days before the date of the enactment of this Act [Dec. 22, 1987],

''(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

''(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

''(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act [42 U.S.C. 1320c–5(b)] until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.''

§ 1320c–6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c–2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Aug. 14, 1935, ch. 531, title XI, §1157, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 389; amended Pub. L. 101–508, title IV, §4205(f), Nov. 5, 1990, 104 Stat. 1388–114.)

PRIOR PROVISIONS

A prior section 1320c–6, act Aug. 14, 1935, ch. 531, title XI, §1157, as added Oct. 30, 1972, Pub. L. 92–603, title II,

§ 249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, § 13(b)(4), 91 Stat. 1198, related to submission of reports by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 inserted ''organization having a contract with the Secretary under this part and no'' after ''No'', struck out ''by him'' after ''the performance'', and substituted ''due care was exercised in the performance of such duty, function, or activity'' for ''he has exercised due care''.

§ 1320c–7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of quality improvement organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c–3 of this title may be performed in an area by contract with a quality improvement organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, ch. 531, title XI, § 1158, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 390; amended Pub. L. 112–40, title II, § 261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c–7, act Aug. 14, 1935, ch. 531, title XI, § 1158, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §§ 5(d)(1), 22(a), 91 Stat. 1185, 1208; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 902(a)(3), 931(h), 94 Stat. 2613, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(e), 2121(g), 95 Stat. 794, 796, related to review approval as a condition of payment of claims, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Subsec. (a). Pub. L. 112–40 substituted ''quality improvement'' for ''utilization and quality control peer review'' in text.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

§ 1320c–8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, § 1159, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–8, act Aug. 14, 1935, ch. 531, title XI, § 1159, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(f), 95 Stat. 795, related to reconsideration hearing and review, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b) of this section.

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the quality improvement organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the quality improvement organization to any such agency—

(i) at the discretion of the quality improvement organization, at the request of

such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the quality improvement organization that there may be a substantial risk to the public health;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the quality improvement organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c–3(a)(9)(B) of this title;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

(c) Penalties

It shall be unlawful for any person to disclose any such information described in subsection (a) of this section other than for the purposes provided in subsections (a) and (b) of this section, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

(d) Subpoena and discovery proceedings regarding patient records

No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpoena or discovery proceedings in a civil action. No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.

(e) Organizations with contracts

For purposes of this section and section 1320c–6 of this title, the term ''organization with a contract with the Secretary under this part'' includes an entity with a contract with the Secretary under section 1320c–3(a)(4)(C)[1] of this title.

(Aug. 14, 1935, ch. 531, title XI, §1160, as added Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 391; amended Pub. L. 99–509, title IX, §9353(d)(1), Oct. 21, 1986, 100 Stat. 2047; Pub. L. 100–203, title IV, §4039(h)(6), Dec. 22, 1987, as added Pub. L. 100–360, title IV, §411(e)(3), July 1, 1988, 102 Stat. 776; Pub. L. 101–508, title IV, §4205(d)(1)(B), (e)(1), Nov. 5, 1990, 104 Stat. 1388–113, 1388–114; Pub. L. 103–432, title I, §156(b)(2)(B), (4), Oct. 31, 1994, 108 Stat. 4441; Pub. L. 112–40, title II, §261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

REFERENCES IN TEXT

Section 1320c–3(a)(4)(C) of this title, referred to in subsec. (e), was repealed by Pub. L. 112–40, title II, §261(c)(2)(A)(ii), Oct. 21, 2011, 125 Stat. 425.

PRIOR PROVISIONS

A prior section 1320c–9, act Aug. 14, 1935, ch. 531, title XI, §1160, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1438; amended Oct. 25, 1977, Pub. L. 95–142, §5(e), (*o*)(3), 91 Stat. 1189, 1191; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2113(g), 95 Stat. 795, enumerated obligations of health care practitioners and providers of health care services, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Subsec. (b)(1)(A) to (C). Pub. L. 112–40 substituted ''quality improvement'' for ''peer review'' wherever appearing.

1994—Subsec. (b)(1)(D). Pub. L. 103–432, §156(b)(2)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''to provide notice to the State medical board in accordance with section 1320c–3(a)(9)(B) of this title when the organization submits a report and recommendations to the Secretary under section 1320c–5(b)(1) of this title with respect to a physician whom the board is responsible for licensing;''.

Subsec. (d). Pub. L. 103–432, §156(b)(4), which directed amendment of subsec. (d) by substituting ''subpoena''

[1] See References in Text note below.

for ''subpena'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, § 4205(d)(1)(B), added subpar. (D).

Subsec. (d). Pub. L. 101–508, § 4205(e)(1), inserted at end ''No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.''

1988—Subsec. (e). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(6), see 1987 Amendment note below.

1987—Subsec. (e). Pub. L. 100–203, § 4039(h)(6), as added by Pub. L. 100–360, added subsec. (e).

1986—Subsec. (b)(1)(C). Pub. L. 99–509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see section 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–432, title I, § 156(b)(6), Oct. 31, 1994, 108 Stat. 4441, provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, sections 1320c–3 and 1320c–5 of this title, and provisions set out as notes under this section and section 1320c–5 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(B) The amendments made by paragraph (2) [amending this section and section 1320c–3 of this title] (relating to the requirement on reporting of information to State boards) shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4205(d)(1)(B) of Pub. L. 101–508 applicable to notices of proposed sanctions issued more than 60 days after Nov. 5, 1990, see section 4205(d)(1)(C) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.

Pub. L. 101–508, title IV, § 4205(e)(2), Nov. 5, 1990, 104 Stat. 1388–114, as amended by Pub. L. 103–432, title I, § 156(b)(5), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to proceedings as of the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–509, title IX, § 9353(d)(2), Oct. 21, 1986, 100 Stat. 2047, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act [Oct. 21, 1986].''

FREEDOM OF INFORMATION ACT REQUEST

Pub. L. 96–499, title IX, § 928, Dec. 5, 1980, 94 Stat. 2630, provided that: ''No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.''

§ 1320c–10. Annual reports

The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all quality improvement organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(5) the total costs incurred under subchapters XVIII and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

(Aug. 14, 1935, ch. 531, title XI, § 1161, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 392; amended Pub. L. 112–40, title II, § 261(a)(2)(C), Oct. 21, 2011, 125 Stat. 423.)

PRIOR PROVISIONS

A prior section 1320c–10, act Aug. 14, 1935, ch. 531, title XI, § 1161, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440, related to giving of notice to a practitioner or provider by a Professional Standards Review Organization immediately after taking certain action or making certain determinations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

2011—Par. (1). Pub. L. 112–40 substituted ''quality improvement'' for ''utilization and quality control peer review''.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–40 applicable to contracts entered into or renewed on or after Jan. 1, 2012, see sec-

tion 261(e) of Pub. L. 112–40, set out as a note under section 1320c of this title.

PERFORMANCE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS; REPORT TO CONGRESS

Pub. L. 97–35, title XXI, § 2112(a)(2)(D), Aug. 13, 1981, 95 Stat. 793, provided that the Secretary of Health and Human Services, not later than September 30, 1982, was to report to the Congress on his assessment (under former section 1320c–3(g) of this title) of the relative performance of Professional Standards Review Organizations and on any determinations made not to renew agreements with such Organizations on the basis of such performance.

§ 1320c–11. Exemptions for religious nonmedical health care institutions

The provisions of this part shall not apply with respect to a religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title).

(Aug. 14, 1935, ch. 531, title XI, § 1162, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393; amended Pub. L. 105–33, title IV, § 4454(c)(2), Aug. 5, 1997, 111 Stat. 431.)

PRIOR PROVISIONS

A prior section 1320c–11, act Aug. 14, 1935, ch. 531, title XI, § 1162, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1440; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 922(a), 927(b), 94 Stat. 2628, 2630; Aug. 13, 1981, 97–35, title XXI, § 2113(h), 95 Stat. 795, related to Statewide Professional Standards Review Councils, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1997—Pub. L. 105–33 substituted ''Exemptions for religious nonmedical health care institutions'' for ''Exemptions of Christian Science sanatoriums'' in section catchline and substituted ''religious nonmedical health care institution (as defined in section 1395x(ss)(1) of this title)'' for ''Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' in text.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective Aug. 5, 1997, and applicable to items and services furnished on or after such date, with provision that Secretary of Health and Human Services issue regulations to carry out such amendment by not later than July 1, 1998, see section 4454(d) of Pub. L. 105–33, set out as an Effective Date note under section 1395i–5 of this title.

§ 1320c–12. Medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be included in the quality improvement program

For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

(Aug. 14, 1935, ch. 531, title XI, § 1163, as added Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 393.)

PRIOR PROVISIONS

A prior section 1320c–12, act Aug. 14, 1935, ch. 531, title XI, § 1163, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1441; amended Oct. 25, 1977, Pub. L. 95–142, § 5(f), (g), 91 Stat. 1189; Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(a)–(d), 94 Stat. 2628, related to establishment and membership of the National Professional Standards Review Council, prior to the general revision of this part by Pub. L. 97–248.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1320c–13. Repealed. Pub. L. 103–432, title I, § 156(a)(1), Oct. 31, 1994, 108 Stat. 4440

Section, act Aug. 14, 1935, ch. 531, title XI, § 1164, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9401(b), 100 Stat. 196; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(17), 100 Stat. 2934; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(v), 103 Stat. 2153, related to 100 percent peer review for certain surgical procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 1320c–3 of this title.

§§ 1320c–14 to 1320c–19. Omitted

CODIFICATION

Sections 1320c–14 to 1320c–19 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–14, act Aug. 14, 1935, ch. 531, title XI, § 1165, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443, related to correlation of functions between Professional Standards Review Organizations and administrative instrumentalities.

Section 1320c–15, act Aug. 14, 1935, ch. 531, title XI, § 1166, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(h), 91 Stat. 1189, related to general prohibition against disclosure of data or information and exceptions to such prohibition. See section 1320c–9 of this title.

Section 1320c–16, act Aug. 14, 1935, ch. 531, title XI, § 1167, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, § 5(i), (n), 91 Stat. 1190, 1191, related to limitation of liability of persons providing information to Professional Standards Review Organizations and Statewide Professional Standards Review Councils. See section 1320c–6 of this title.

Section 1320c–17, act Aug. 14, 1935, ch. 531, title XI, § 1168, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444; amended Dec. 31, 1975, Pub. L. 94–182, title I, § 112(c), 89 Stat. 1055; Oct. 25, 1977, Pub. L. 95–142, § 5(j), 91 Stat. 1190; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(j), 95 Stat. 795, related to authorization for use of funds for administering professional review program, transfer of moneys between funds, and payments for Professional Standards Review Organizations. See section 1320c–8 of this title.

Section 1320c–18, act Aug. 14, 1935, ch. 531, title XI, § 1169, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444, related to technical assistance given to organizations desiring to be designated as Professional Standards Review Organizations.

Section 1320c–19, act Aug. 14, 1935, ch. 531, title XI, § 1170, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1445, related to exemptions of Christian Science sanatoriums. See section 1320c–11 of this title.

§ 1320c–20. Repealed. Pub. L. 97–35, title XXI, § 2113(k), Aug. 13, 1981, 95 Stat. 795

Section, act Aug. 14, 1935, ch. 531, title XI, § 1171, as added Oct. 25, 1977, Pub. L. 95–142, § 5(d)(2)(D), 91 Stat.

1186, set forth provisions respecting Federal-State relations regarding memorandum of understanding between Organization and State agency.

EFFECTIVE DATE OF REPEAL

Repeal applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1396a of this title.

§§ 1320c–21, 1320c–22. Omitted

CODIFICATION

Sections 1320c–21 and 1320c–22 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–21, act Aug. 14, 1935, ch. 531, title XI, § 1172, as added Oct. 25, 1977, Pub. L. 95–142, § 5(k), 91 Stat. 1190; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(*l*), 2193(c)(7), 95 Stat. 795, 827, related to annual reports submitted to Congress by Secretary. See section 1320c–10 of this title.

Section 1320c–22, act Aug. 14, 1935, ch. 531, title XI, § 1173, as added Oct. 25, 1977, Pub. L. 95–142, § 5(*l*)(1), 91 Stat. 1191; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(e), 94 Stat. 2628, provided that medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands were includable in program under former Part B. See section 1320c–12 of this title.

PART C—ADMINISTRATIVE SIMPLIFICATION

§ 1320d. Definitions

For purposes of this part:

(1) Code set

The term ''code set'' means any set of codes used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

(2) Health care clearinghouse

The term ''health care clearinghouse'' means a public or private entity that processes or facilitates the processing of nonstandard data elements of health information into standard data elements.

(3) Health care provider

The term ''health care provider'' includes a provider of services (as defined in section 1395x(u) of this title), a provider of medical or other health services (as defined in section 1395x(s) of this title), and any other person furnishing health care services or supplies.

(4) Health information

The term ''health information'' means any information, whether oral or recorded in any form or medium, that—

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

(5) Health plan

The term ''health plan'' means an individual or group plan that provides, or pays the cost of, medical care (as such term is defined in section 300gg–91 of this title). Such term includes the following, and any combination thereof:

(A) A group health plan (as defined in section 300gg–91(a) of this title), but only if the plan—

(i) has 50 or more participants (as defined in section 1002(7) of title 29); or

(ii) is administered by an entity other than the employer who established and maintains the plan.

(B) A health insurance issuer (as defined in section 300gg–91(b) of this title).

(C) A health maintenance organization (as defined in section 300gg–91(b) of this title).

(D) Parts[1] A, B, C, or D of the Medicare program under subchapter XVIII of this chapter.

(E) The medicaid program under subchapter XIX of this chapter.

(F) A Medicare supplemental policy (as defined in section 1395ss(g)(1) of this title).

(G) A long-term care policy, including a nursing home fixed indemnity policy (unless the Secretary determines that such a policy does not provide sufficiently comprehensive coverage of a benefit so that the policy should be treated as a health plan).

(H) An employee welfare benefit plan or any other arrangement which is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(I) The health care program for active military personnel under title 10.

(J) The veterans health care program under chapter 17 of title 38.

(K) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), as defined in section 1072(4) of title 10.

(L) The Indian health service program under the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

(M) The Federal Employees Health Benefit Plan under chapter 89 of title 5.

(6) Individually identifiable health information

The term ''individually identifiable health information'' means any information, including demographic information collected from an individual, that—

(A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and—

(i) identifies the individual; or

(ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(7) Standard

The term ''standard'', when used with reference to a data element of health information

[1] So in original. Probably should be ''Part''.

or a transaction referred to in section 1320d–2(a)(1) of this title, means any such data element or transaction that meets each of the standards and implementation specifications adopted or established by the Secretary with respect to the data element or transaction under sections 1320d–1 through 1320d–3 of this title.

(8) Standard setting organization

The term ''standard setting organization'' means a standard setting organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, that develops standards for information transactions, data elements, or any other standard that is necessary to, or will facilitate, the implementation of this part.

(9) Operating rules

The term ''operating rules'' means the necessary business rules and guidelines for the electronic exchange of information that are not defined by a standard or its implementation specifications as adopted for purposes of this part.

(Aug. 14, 1935, ch. 531, title XI, §1171, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2021; amended Pub. L. 107–105, §4, Dec. 27, 2001, 115 Stat. 1007; Pub. L. 111–5, div. A, title XIII, §13102, Feb. 17, 2009, 123 Stat. 242; Pub. L. 111–148, title I, §1104(b)(1), Mar. 23, 2010, 124 Stat. 146.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in par. (5)(L), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1171 of act Aug. 14, 1935, was classified to section 1320c–20 of this title prior to repeal by Pub. L. 97–35.

AMENDMENTS

2010—Par. (9). Pub. L. 111–148 added par. (9).

2009—Par. (5)(D). Pub. L. 111–5 substituted ''C, or D'' for ''or C''.

2001—Par. (5)(D). Pub. L. 107–105 substituted ''Parts A, B, or C'' for ''Part A or part B''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title I, §1105, Mar. 23, 2010, 124 Stat. 154, provided that: ''This subtitle [subtitle B (§§1101–1105) of title I of Pub. L. 111–148, enacting subchapter I of chapter 157 of this title, amending this section and sections 1320d–2 and 1395y of this title, enacting provisions set out as a note under section 1320d–2 of this title, and amending provisions set out as a note under this section] shall take effect on the date of enactment of this Act [Mar. 23, 2010].''

PURPOSE

Pub. L. 104–191, title II, §261, Aug. 21, 1996, 110 Stat. 2021, as amended by Pub. L. 111–148, title I, §1104(a), Mar. 23, 2010, 124 Stat. 146, provided that: ''It is the purpose of this subtitle [subtitle F (§§261–264) of title II of Pub. L. 104–191, enacting this part, amending sections 242k and 1395cc of this title, and enacting provisions set out as a note under section 1320d–2 of this title] to improve the Medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the medicaid program under title XIX of such Act [42 U.S.C. 1396 et seq.], and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of uniform standards and requirements for the electronic transmission of certain health information and to reduce the clerical burden on patients, health care providers, and health plans.''

§ 1320d–1. General requirements for adoption of standards

(a) Applicability

Any standard adopted under this part shall apply, in whole or in part, to the following persons:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d–2(a)(1) of this title.

(b) Reduction of costs

Any standard adopted under this part shall be consistent with the objective of reducing the administrative costs of providing and paying for health care.

(c) Role of standard setting organizations

(1) In general

Except as provided in paragraph (2), any standard adopted under this part shall be a standard that has been developed, adopted, or modified by a standard setting organization.

(2) Special rules

(A) Different standards

The Secretary may adopt a standard that is different from any standard developed, adopted, or modified by a standard setting organization, if—

(i) the different standard will substantially reduce administrative costs to health care providers and health plans compared to the alternatives; and

(ii) the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of title 5.

(B) No standard by standard setting organization

If no standard setting organization has developed, adopted, or modified any standard relating to a standard that the Secretary is authorized or required to adopt under this part—

(i) paragraph (1) shall not apply; and

(ii) subsection (f) of this section shall apply.

(3) Consultation requirement

(A) In general

A standard may not be adopted under this part unless—

(i) in the case of a standard that has been developed, adopted, or modified by a standard setting organization, the organization consulted with each of the organizations described in subparagraph (B) in the course of such development, adoption, or modification; and

(ii) in the case of any other standard, the Secretary, in complying with the requirements of subsection (f) of this section, consulted with each of the organizations described in subparagraph (B) before adopting the standard.

(B) Organizations described

The organizations referred to in subparagraph (A) are the following:

(i) The National Uniform Billing Committee.

(ii) The National Uniform Claim Committee.

(iii) The Workgroup for Electronic Data Interchange.

(iv) The American Dental Association.

(d) Implementation specifications

The Secretary shall establish specifications for implementing each of the standards adopted under this part.

(e) Protection of trade secrets

Except as otherwise required by law, a standard adopted under this part shall not require disclosure of trade secrets or confidential commercial information by a person required to comply with this part.

(f) Assistance to Secretary

In complying with the requirements of this part, the Secretary shall rely on the recommendations of the National Committee on Vital and Health Statistics established under section 242k(k) of this title, and shall consult with appropriate Federal and State agencies and private organizations. The Secretary shall publish in the Federal Register any recommendation of the National Committee on Vital and Health Statistics regarding the adoption of a standard under this part.

(g) Application to modifications of standards

This section shall apply to a modification to a standard (including an addition to a standard) adopted under section 1320d–3(b) of this title in the same manner as it applies to an initial standard adopted under section 1320d–3(a) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1172, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2023.)

PRIOR PROVISIONS

A prior section 1172 of act Aug. 14, 1935, was classified to section 1320c–21 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

§ 1320d–2. Standards for information transactions and data elements

(a) Standards to enable electronic exchange

(1) In general

The Secretary shall adopt standards for transactions, and data elements for such transactions, to enable health information to be exchanged electronically, that are appropriate for—

(A) the financial and administrative transactions described in paragraph (2); and

(B) other financial and administrative transactions determined appropriate by the Secretary, consistent with the goals of improving the operation of the health care system and reducing administrative costs, and subject to the requirements under paragraph (5).

(2) Transactions

The transactions referred to in paragraph (1)(A) are transactions with respect to the following:

(A) Health claims or equivalent encounter information.

(B) Health claims attachments.

(C) Enrollment and disenrollment in a health plan.

(D) Eligibility for a health plan.

(E) Health care payment and remittance advice.

(F) Health plan premium payments.

(G) First report of injury.

(H) Health claim status.

(I) Referral certification and authorization.

(J) Electronic funds transfers.

(3) Accommodation of specific providers

The standards adopted by the Secretary under paragraph (1) shall accommodate the needs of different types of health care providers.

(4) Requirements for financial and administrative transactions

(A) In general

The standards and associated operating rules adopted by the Secretary shall—

(i) to the extent feasible and appropriate, enable determination of an individual's eligibility and financial responsibility for specific services prior to or at the point of care;

(ii) be comprehensive, requiring minimal augmentation by paper or other communications;

(iii) provide for timely acknowledgment, response, and status reporting that supports a transparent claims and denial management process (including adjudication and appeals); and

(iv) describe all data elements (including reason and remark codes) in unambiguous terms, require that such data elements be required or conditioned upon set values in other fields, and prohibit additional conditions (except where necessary to implement State or Federal law, or to protect against fraud and abuse).

(B) Reduction of clerical burden

In adopting standards and operating rules for the transactions referred to under paragraph (1), the Secretary shall seek to reduce the number and complexity of forms (including paper and electronic forms) and data entry required by patients and providers.

(5) Consideration of standardization of activities and items

(A) In general

For purposes of carrying out paragraph (1)(B), the Secretary shall solicit, not later than January 1, 2012, and not less than every

3 years thereafter, input from entities described in subparagraph (B) on—

(i) whether there could be greater uniformity in financial and administrative activities and items, as determined appropriate by the Secretary; and

(ii) whether such activities should be considered financial and administrative transactions (as described in paragraph (1)(B)) for which the adoption of standards and operating rules would improve the operation of the health care system and reduce administrative costs.

(B) Solicitation of input

For purposes of subparagraph (A), the Secretary shall seek input from—

(i) the National Committee on Vital and Health Statistics, the Health Information Technology Policy Committee, and the Health Information Technology Standards Committee; and

(ii) standard setting organizations and stakeholders, as determined appropriate by the Secretary.

(b) Unique health identifiers

(1) In general

The Secretary shall adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. In carrying out the preceding sentence for each health plan and health care provider, the Secretary shall take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers.

(2) Use of identifiers

The standards adopted under paragraph (1) shall specify the purposes for which a unique health identifier may be used.

(c) Code sets

(1) In general

The Secretary shall adopt standards that—

(A) select code sets for appropriate data elements for the transactions referred to in subsection (a)(1) of this section from among the code sets that have been developed by private and public entities; or

(B) establish code sets for such data elements if no code sets for the data elements have been developed.

(2) Distribution

The Secretary shall establish efficient and low-cost procedures for distribution (including electronic distribution) of code sets and modifications made to such code sets under section 1320d–3(b) of this title.

(d) Security standards for health information

(1) Security standards

The Secretary shall adopt security standards that—

(A) take into account—

(i) the technical capabilities of record systems used to maintain health information;

(ii) the costs of security measures;

(iii) the need for training persons who have access to health information;

(iv) the value of audit trails in computerized record systems; and

(v) the needs and capabilities of small health care providers and rural health care providers (as such providers are defined by the Secretary); and

(B) ensure that a health care clearinghouse, if it is part of a larger organization, has policies and security procedures which isolate the activities of the health care clearinghouse with respect to processing information in a manner that prevents unauthorized access to such information by such larger organization.

(2) Safeguards

Each person described in section 1320d–1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards—

(A) to ensure the integrity and confidentiality of the information;

(B) to protect against any reasonably anticipated—

(i) threats or hazards to the security or integrity of the information; and

(ii) unauthorized uses or disclosures of the information; and

(C) otherwise to ensure compliance with this part by the officers and employees of such person.

(e) Electronic signature

(1) Standards

The Secretary, in coordination with the Secretary of Commerce, shall adopt standards specifying procedures for the electronic transmission and authentication of signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(2) Effect of compliance

Compliance with the standards adopted under paragraph (1) shall be deemed to satisfy Federal and State statutory requirements for written signatures with respect to the transactions referred to in subsection (a)(1) of this section.

(f) Transfer of information among health plans

The Secretary shall adopt standards for transferring among health plans appropriate standard data elements needed for the coordination of benefits, the sequential processing of claims, and other data elements for individuals who have more than one health plan.

(g) Operating rules

(1) In general

The Secretary shall adopt a single set of operating rules for each transaction referred to under subsection (a)(1) with the goal of creating as much uniformity in the implementation of the electronic standards as possible. Such operating rules shall be consensus-based and reflect the necessary business rules affecting health plans and health care providers and the manner in which they operate pursuant to

standards issued under Health Insurance Portability and Accountability Act of 1996.

(2) Operating rules development

In adopting operating rules under this subsection, the Secretary shall consider recommendations for operating rules developed by a qualified nonprofit entity that meets the following requirements:

(A) The entity focuses its mission on administrative simplification.

(B) The entity demonstrates a multi-stakeholder and consensus-based process for development of operating rules, including representation by or participation from health plans, health care providers, vendors, relevant Federal agencies, and other standard development organizations.

(C) The entity has a public set of guiding principles that ensure the operating rules and process are open and transparent, and supports nondiscrimination and conflict of interest policies that demonstrate a commitment to open, fair, and nondiscriminatory practices.

(D) The entity builds on the transaction standards issued under Health Insurance Portability and Accountability Act of 1996.

(E) The entity allows for public review and updates of the operating rules.

(3) Review and recommendations

The National Committee on Vital and Health Statistics shall—

(A) advise the Secretary as to whether a nonprofit entity meets the requirements under paragraph (2);

(B) review the operating rules developed and recommended by such nonprofit entity;

(C) determine whether such operating rules represent a consensus view of the health care stakeholders and are consistent with and do not conflict with other existing standards;

(D) evaluate whether such operating rules are consistent with electronic standards adopted for health information technology; and

(E) submit to the Secretary a recommendation as to whether the Secretary should adopt such operating rules.

(4) Implementation

(A) In general

The Secretary shall adopt operating rules under this subsection, by regulation in accordance with subparagraph (C), following consideration of the operating rules developed by the non-profit entity described in paragraph (2) and the recommendation submitted by the National Committee on Vital and Health Statistics under paragraph (3)(E) and having ensured consultation with providers.

(B) Adoption requirements; effective dates

(i) Eligibility for a health plan and health claim status

The set of operating rules for eligibility for a health plan and health claim status transactions shall be adopted not later than July 1, 2011, in a manner ensuring that such operating rules are effective not later than January 1, 2013, and may allow for the use of a machine readable identification card.

(ii) Electronic funds transfers and health care payment and remittance advice

The set of operating rules for electronic funds transfers and health care payment and remittance advice transactions shall—

(I) allow for automated reconciliation of the electronic payment with the remittance advice; and

(II) be adopted not later than July 1, 2012, in a manner ensuring that such operating rules are effective not later than January 1, 2014.

(iii) Health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, referral certification and authorization

The set of operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, and referral certification and authorization transactions shall be adopted not later than July 1, 2014, in a manner ensuring that such operating rules are effective not later than January 1, 2016.

(C) Expedited rulemaking

The Secretary shall promulgate an interim final rule applying any standard or operating rule recommended by the National Committee on Vital and Health Statistics pursuant to paragraph (3). The Secretary shall accept and consider public comments on any interim final rule published under this subparagraph for 60 days after the date of such publication.

(h) Compliance

(1) Health plan certification

(A) Eligibility for a health plan, health claim status, electronic funds transfers, health care payment and remittance advice

Not later than December 31, 2013, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable standards (as described under paragraph (7) of section 1320d of this title) and associated operating rules (as described under paragraph (9) of such section) for electronic funds transfers, eligibility for a health plan, health claim status, and health care payment and remittance advice, respectively.

(B) Health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, referral certification and authorization

Not later than December 31, 2015, a health plan shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and infor-

mation systems for such plan are in compliance with any applicable standards and associated operating rules for health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, health claims attachments, and referral certification and authorization, respectively. A health plan shall provide the same level of documentation to certify compliance with such transactions as is required to certify compliance with the transactions specified in subparagraph (A).

(2) Documentation of compliance

A health plan shall provide the Secretary, in such form as the Secretary may require, with adequate documentation of compliance with the standards and operating rules described under paragraph (1). A health plan shall not be considered to have provided adequate documentation and shall not be certified as being in compliance with such standards, unless the health plan—

(A) demonstrates to the Secretary that the plan conducts the electronic transactions specified in paragraph (1) in a manner that fully complies with the regulations of the Secretary; and

(B) provides documentation showing that the plan has completed end-to-end testing for such transactions with their partners, such as hospitals and physicians.

(3) Service contracts

A health plan shall be required to ensure that any entities that provide services pursuant to a contract with such health plan shall comply with any applicable certification and compliance requirements (and provide the Secretary with adequate documentation of such compliance) under this subsection.

(4) Certification by outside entity

The Secretary may designate independent, outside entities to certify that a health plan has complied with the requirements under this subsection, provided that the certification standards employed by such entities are in accordance with any standards or operating rules issued by the Secretary.

(5) Compliance with revised standards and operating rules

(A) In general

A health plan (including entities described under paragraph (3)) shall file a statement with the Secretary, in such form as the Secretary may require, certifying that the data and information systems for such plan are in compliance with any applicable revised standards and associated operating rules under this subsection for any interim final rule promulgated by the Secretary under subsection (i) that—

(i) amends any standard or operating rule described under paragraph (1) of this subsection; or

(ii) establishes a standard (as described under subsection (a)(1)(B)) or associated operating rules (as described under subsection (i)(5)) for any other financial and administrative transactions.

(B) Date of compliance

A health plan shall comply with such requirements not later than the effective date of the applicable standard or operating rule.

(6) Audits of health plans

The Secretary shall conduct periodic audits to ensure that health plans (including entities described under paragraph (3)) are in compliance with any standards and operating rules that are described under paragraph (1) or subsection (i)(5).

(i) Review and amendment of standards and operating rules

(1) Establishment

Not later than January 1, 2014, the Secretary shall establish a review committee (as described under paragraph (4)).

(2) Evaluations and reports

(A) Hearings

Not later than April 1, 2014, and not less than biennially thereafter, the Secretary, acting through the review committee, shall conduct hearings to evaluate and review the adopted standards and operating rules established under this section.

(B) Report

Not later than July 1, 2014, and not less than biennially thereafter, the review committee shall provide recommendations for updating and improving such standards and operating rules. The review committee shall recommend a single set of operating rules per transaction standard and maintain the goal of creating as much uniformity as possible in the implementation of the electronic standards.

(3) Interim final rulemaking

(A) In general

Any recommendations to amend adopted standards and operating rules that have been approved by the review committee and reported to the Secretary under paragraph (2)(B) shall be adopted by the Secretary through promulgation of an interim final rule not later than 90 days after receipt of the committee's report.

(B) Public comment

(i) Public comment period

The Secretary shall accept and consider public comments on any interim final rule published under this paragraph for 60 days after the date of such publication.

(ii) Effective date

The effective date of any amendment to existing standards or operating rules that is adopted through an interim final rule published under this paragraph shall be 25 months following the close of such public comment period.

(4) Review committee

(A) Definition

For the purposes of this subsection, the term ''review committee' means a committee chartered by or within the Department

of Health and Human services that has been designated by the Secretary to carry out this subsection, including—

(i) the National Committee on Vital and Health Statistics; or

(ii) any appropriate committee as determined by the Secretary.

(B) Coordination of HIT standards

In developing recommendations under this subsection, the review committee shall ensure coordination, as appropriate, with the standards that support the certified electronic health record technology approved by the Office of the National Coordinator for Health Information Technology.

(5) Operating rules for other standards adopted by the Secretary

The Secretary shall adopt a single set of operating rules (pursuant to the process described under subsection (g)) for any transaction for which a standard had been adopted pursuant to subsection (a)(1)(B).

(j) Penalties

(1) Penalty fee

(A) In general

Not later than April 1, 2014, and annually thereafter, the Secretary shall assess a penalty fee (as determined under subparagraph (B)) against a health plan that has failed to meet the requirements under subsection (h) with respect to certification and documentation of compliance with—

(i) the standards and associated operating rules described under paragraph (1) of such subsection; and

(ii) a standard (as described under subsection (a)(1)(B)) and associated operating rules (as described under subsection (i)(5)) for any other financial and administrative transactions.

(B) Fee amount

Subject to subparagraphs (C), (D), and (E), the Secretary shall assess a penalty fee against a health plan in the amount of $1 per covered life until certification is complete. The penalty shall be assessed per person covered by the plan for which its data systems for major medical policies are not in compliance and shall be imposed against the health plan for each day that the plan is not in compliance with the requirements under subsection (h).

(C) Additional penalty for misrepresentation

A health plan that knowingly provides inaccurate or incomplete information in a statement of certification or documentation of compliance under subsection (h) shall be subject to a penalty fee that is double the amount that would otherwise be imposed under this subsection.

(D) Annual fee increase

The amount of the penalty fee imposed under this subsection shall be increased on an annual basis by the annual percentage increase in total national health care expenditures, as determined by the Secretary.

(E) Penalty limit

A penalty fee assessed against a health plan under this subsection shall not exceed, on an annual basis—

(i) an amount equal to $20 per covered life under such plan; or

(ii) an amount equal to $40 per covered life under the plan if such plan has knowingly provided inaccurate or incomplete information (as described under subparagraph (C)).

(F) Determination of covered individuals

The Secretary shall determine the number of covered lives under a health plan based upon the most recent statements and filings that have been submitted by such plan to the Securities and Exchange Commission.

(2) Notice and dispute procedure

The Secretary shall establish a procedure for assessment of penalty fees under this subsection that provides a health plan with reasonable notice and a dispute resolution procedure prior to provision of a notice of assessment by the Secretary of the Treasury (as described under paragraph (4)(B)).

(3) Penalty fee report

Not later than May 1, 2014, and annually thereafter, the Secretary shall provide the Secretary of the Treasury with a report identifying those health plans that have been assessed a penalty fee under this subsection.

(4) Collection of penalty fee

(A) In general

The Secretary of the Treasury, acting through the Financial Management Service, shall administer the collection of penalty fees from health plans that have been identified by the Secretary in the penalty fee report provided under paragraph (3).

(B) Notice

Not later than August 1, 2014, and annually thereafter, the Secretary of the Treasury shall provide notice to each health plan that has been assessed a penalty fee by the Secretary under this subsection. Such notice shall include the amount of the penalty fee assessed by the Secretary and the due date for payment of such fee to the Secretary of the Treasury (as described in subparagraph (C)).

(C) Payment due date

Payment by a health plan for a penalty fee assessed under this subsection shall be made to the Secretary of the Treasury not later than November 1, 2014, and annually thereafter.

(D) Unpaid penalty fees

Any amount of a penalty fee assessed against a health plan under this subsection for which payment has not been made by the due date provided under subparagraph (C) shall be—

(i) increased by the interest accrued on such amount, as determined pursuant to the underpayment rate established under section 6621 of the Internal Revenue Code of 1986; and

(ii) treated as a past-due, legally enforceable debt owed to a Federal agency for purposes of section 6402(d) of the Internal Revenue Code of 1986.

(E) Administrative fees

Any fee charged or allocated for collection activities conducted by the Financial Management Service will be passed on to a health plan on a pro-rata basis and added to any penalty fee collected from the plan.

(Aug. 14, 1935, ch. 531, title XI, §1173, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2024; amended Pub. L. 111–148, title I, §1104(b)(2), title X, §10109(a), Mar. 23, 2010, 124 Stat. 147, 915.)

REFERENCES IN TEXT

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (g)(1), (2)(D), is Pub. L. 104–191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendments note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (j)(4)(D)(i), (ii), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1173 of act Aug. 14, 1935, was classified to section 1320c–22 of this title prior to the general amendment of part B of this subchapter by Pub. L. 97–248.

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111–148, §10109(a)(1)(A), inserted before period at end ‘‘, and subject to the requirements under paragraph (5)’’.

Subsec. (a)(2)(J). Pub. L. 111–148, §1104(b)(2)(A), added subpar. (J).

Subsec. (a)(4). Pub. L. 111–148, §1104(b)(2)(B), added par. (4).

Subsec. (a)(5). Pub. L. 111–148, §10109(a)(1)(B), added par. (5).

Subsecs. (g) to (j). Pub. L. 111–148, §1104(b)(2)(C), added subsecs. (g) to (j).

DELAY IN TRANSITION FROM ICD–9 TO ICD–10 CODE SETS

Pub. L. 113–93, title II, §212, Apr. 1, 2014, 128 Stat. 1047, provided that: ‘‘The Secretary of Health and Human Services may not, prior to October 1, 2015, adopt ICD–10 code sets as the standard for code sets under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)) and section 162.1002 of title 45, Code of Federal Regulations.’’

PROMULGATION OF RULES

Pub. L. 111–148, title I, §1104(c), Mar. 23, 2010, 124 Stat. 153, provided that:

‘‘(1) UNIQUE HEALTH PLAN IDENTIFIER.—The Secretary [of Health and Human Services] shall promulgate a final rule to establish a unique health plan identifier (as described in section 1173(b) of the Social Security Act (42 U.S.C. 1320d–2(b))) based on the input of the National Committee on Vital and Health Statistics. The Secretary may do so on an interim final basis and such rule shall be effective not later than October 1, 2012.

‘‘(2) ELECTRONIC FUNDS TRANSFER.—The Secretary shall promulgate a final rule to establish a standard for electronic funds transfers (as described in section 1173(a)(2)(J) of the Social Security Act, as added by subsection (b)(2)(A)). The Secretary may do so on an interim final basis and shall adopt such standard not later than January 1, 2012, in a manner ensuring that such standard is effective not later than January 1, 2014.

‘‘(3) HEALTH CLAIMS ATTACHMENTS.—The Secretary shall promulgate a final rule to establish a transaction standard and a single set of associated operating rules for health claims attachments (as described in section 1173(a)(2)(B) of the Social Security Act (42 U.S.C. 1320d–2(a)(2)(B))) that is consistent with the X12 Version 5010 transaction standards. The Secretary may do so on an interim final basis and shall adopt a transaction standard and a single set of associated operating rules not later than January 1, 2014, in a manner ensuring that such standard is effective not later than January 1, 2016.’’

ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION; ICD CODING CROSSWALKS

Pub. L. 111–148, title X, §10109(b), (c), Mar. 23, 2010, 124 Stat. 916, provided that:

‘‘(b) ACTIVITIES AND ITEMS FOR INITIAL CONSIDERATION.—For purposes of section 1173(a)(5) of the Social Security Act [42 U.S.C. 1320d–2(a)(5)], as added by subsection (a), the Secretary of Health and Human Services (in this section referred to as the ‘Secretary’) shall, not later than January 1, 2012, seek input on activities and items relating to the following areas:

‘‘(1) Whether the application process, including the use of a uniform application form, for enrollment of health care providers by health plans could be made electronic and standardized.

‘‘(2) Whether standards and operating rules described in section 1173 of the Social Security Act should apply to the health care transactions of automobile insurance, worker’s compensation, and other programs or persons not described in section 1172(a) of such Act (42 U.S.C. 1320d–1(a)).

‘‘(3) Whether standardized forms could apply to financial audits required by health plans, Federal and State agencies (including State auditors, the Office of the Inspector General of the Department of Health and Human Services, and the Centers for Medicare & Medicaid Services), and other relevant entities as determined appropriate by the Secretary.

‘‘(4) Whether there could be greater transparency and consistency of methodologies and processes used to establish claim edits used by health plans (as described in section 1171(5) of the Social Security Act (42 U.S.C. 1320d(5))).

‘‘(5) Whether health plans should be required to publish their timeliness of payment rules.

‘‘(c) ICD CODING CROSSWALKS.—

‘‘(1) ICD–9 TO ICD–10 CROSSWALK.—The Secretary shall task the ICD–9–CM Coordination and Maintenance Committee to convene a meeting, not later than January 1, 2011, to receive input from appropriate stakeholders (including health plans, health care providers, and clinicians) regarding the crosswalk between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD–9 and ICD–10, respectively) that is posted on the website of the Centers for Medicare & Medicaid Services, and make recommendations about appropriate revisions to such crosswalk.

‘‘(2) REVISION OF CROSSWALK.—For purposes of the crosswalk described in paragraph (1), the Secretary shall make appropriate revisions and post any such revised crosswalk on the website of the Centers for Medicare & Medicaid Services.

‘‘(3) USE OF REVISED CROSSWALK.—For purposes of paragraph (2), any revised crosswalk shall be treated as a code set for which a standard has been adopted by the Secretary for purposes of section 1173(c)(1)(B) of the Social Security Act (42 U.S.C. 1320d–2(c)(1)(B)).

‘‘(4) SUBSEQUENT CROSSWALKS.—For subsequent revisions of the International Classification of Diseases that are adopted by the Secretary as a standard code set under section 1173(c) of the Social Security Act (42 U.S.C. 1320d–2(c)), the Secretary shall, after consultation with the appropriate stakeholders, post on the website of the Centers for Medicare & Medicaid Services a crosswalk between the previous and subsequent version of the International Classification of

Diseases not later than the date of implementation of such subsequent revision.''

RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION

Pub. L. 104–191, title II, § 264, Aug. 21, 1996, 110 Stat. 2033, provided that:

''(a) IN GENERAL.—Not later than the date that is 12 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall submit to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Commerce and the Committee on Ways and Means of the House of Representatives detailed recommendations on standards with respect to the privacy of individually identifiable health information.

''(b) SUBJECTS FOR RECOMMENDATIONS.—The recommendations under subsection (a) shall address at least the following:

''(1) The rights that an individual who is a subject of individually identifiable health information should have.

''(2) The procedures that should be established for the exercise of such rights.

''(3) The uses and disclosures of such information that should be authorized or required.

''(c) REGULATIONS.—

''(1) IN GENERAL.—If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act [42 U.S.C. 1320d–2(a)] (as added by section 262) is not enacted by the date that is 36 months after the date of the enactment of this Act [Aug. 21, 1996], the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than the date that is 42 months after the date of the enactment of this Act. Such regulations shall address at least the subjects described in subsection (b).

''(2) PREEMPTION.—A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation.

''(d) CONSULTATION.—In carrying out this section, the Secretary of Health and Human Services shall consult with—

''(1) the National Committee on Vital and Health Statistics established under section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)); and

''(2) the Attorney General.''

EX. ORD. NO. 13181. TO PROTECT THE PRIVACY OF PROTECTED HEALTH INFORMATION IN OVERSIGHT INVESTIGATIONS

Ex. Ord. No. 13181, Dec. 20, 2000, 65 F.R. 81321, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

SECTION 1. *Policy*.

It shall be the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual that is discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations of a non-health oversight matter, except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. Protecting the privacy of patients' protected health information promotes trust in the health care system. It improves the quality of health care by fostering an environment in which patients can feel more comfortable in providing health care professionals with accurate and detailed information about their personal health. In order to provide greater protections to patients' privacy, the Department of Health and Human Services is issuing final regulations concerning the confidentiality of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104–191, see Tables for classification] (HIPAA). HIPAA applies only to ''covered entities,'' such as health care plans, providers, and clearinghouses. HIPAA regulations therefore do not apply to other organizations and individuals that gain access to protected health information, including Federal officials who gain access to health records during health oversight activities.

Under the new HIPAA regulations, health oversight investigators will appropriately have ready access to medical records for oversight purposes. Health oversight investigators generally do not seek access to the medical records of a particular patient, but instead review large numbers of records to determine whether a health care provider or organization is violating the law, such as through fraud against the Medicare system. Access to many health records is often necessary in order to gain enough evidence to detect and bring enforcement actions against fraud in the health care system. Stricter rules apply under the HIPAA regulations, however, when law enforcement officials seek protected health information in order to investigate criminal activity outside of the health oversight realm.

In the course of their efforts to protect the health care system, health oversight investigators may also uncover evidence of wrongdoing unrelated to the health care system, such as evidence of criminal conduct by an individual who has sought health care. For records containing that evidence, the issue thus arises whether the information should be available for law enforcement purposes under the less restrictive oversight rules or the more restrictive rules that apply to non-oversight criminal investigations.

A similar issue has arisen in other circumstances. Under 18 U.S.C. 3486, an individual's health records obtained for health oversight purposes pursuant to an administrative subpoena may not be used against that individual patient in an unrelated investigation by law enforcement unless a judicial officer finds good cause. Under that statute, a judicial officer determines whether there is good cause by weighing the public interest and the need for disclosure against the potential for injury to the patient, to the physician-patient relationship, and to the treatment services. It is appropriate to extend limitations on the use of health information to all situations in which the government obtains medical records for a health oversight purpose. In recognition of the increasing importance of protecting health information as shown in the medical privacy rule, a higher standard than exists in 18 U.S.C. 3486 is necessary. It is, therefore, the policy of the Government of the United States that law enforcement may not use protected health information concerning an individual, discovered during the course of health oversight activities for unrelated civil, administrative, or criminal investigations, against that individual except when the balance of relevant factors weighs clearly in favor of its use. That is, protected health information may not be so used unless the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

SEC. 2. *Definitions*.

(a) ''Health oversight activities'' shall include the oversight activities enumerated in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended [Pub. L. 104–191, see Tables for classification].

(b) ''Protected health information'' shall have the meaning ascribed to it in the regulations concerning the confidentiality of individually identifiable health information promulgated by the Secretary of Health and Human Services pursuant to the ''Health Insurance Portability and Accountability Act of 1996,'' as amended.

(c) ''Injury to the patient'' includes injury to the privacy interests of the patient.

SEC. 3. *Implementation.*

(a) Protected health information concerning an individual patient discovered during the course of health oversight activities shall not be used against that individual patient in an unrelated civil, administrative, or criminal investigation of a non-health oversight matter unless the Deputy Attorney General of the U.S Department of Justice, or insofar as the protected health information involves members of the Armed Forces, the General Counsel of the U.S. Department of Defense, has authorized such use.

(b) In assessing whether protected health information should be used under subparagraph (a) of this section, the Deputy Attorney General shall permit such use upon concluding that the balance of relevant factors weighs clearly in favor of its use. That is, the Deputy Attorney General shall permit disclosure if the public interest and the need for disclosure clearly outweigh the potential for injury to the patient, to the physician-patient relationship, and to the treatment services.

(c) Upon the decision to use protected health information under subparagraph (a) of this section, the Deputy Attorney General, in determining the extent to which this information should be used, shall impose appropriate safeguards against unauthorized use.

(d) On an annual basis, the Department of Justice, in consultation with the Department of Health and Human Services, shall provide to the President of the United States a report that includes the following information:

(i) the number of requests made to the Deputy Attorney General for authorization to use protected health information discovered during health oversight activities in a non-health oversight, unrelated investigation;

(ii) the number of requests that were granted as applied for, granted as modified, or denied;

(iii) the agencies that made the applications, and the number of requests made by each agency; and

(iv) the uses for which the protected health information was authorized.

(e) The General Counsel of the U.S. Department of Defense will comply with the requirements of subparagraphs (b), (c), and (d), above. The General Counsel also will prepare a report, consistent with the requirements of subparagraphs (d)(i) through (d)(iv), above, and will forward it to the Department of Justice where it will be incorporated into the Department's annual report to the President.

SEC. 4. *Exceptions.*

(a) Nothing in this Executive Order shall place a restriction on the derivative use of protected health information that was obtained by a law enforcement agency in a non-health oversight investigation.

(b) Nothing in this Executive Order shall be interpreted to place a restriction on a duty imposed by statute.

(c) Nothing in this Executive Order shall place any additional limitation on the derivative use of health information obtained by the Attorney General pursuant to the provisions of 18 U.S.C. 3486.

(d) This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the officers and employees, or any other person.

WILLIAM J. CLINTON.

§ 1320d–3. Timetables for adoption of standards

(a) Initial standards

The Secretary shall carry out section 1320d–2 of this title not later than 18 months after August 21, 1996, except that standards relating to claims attachments shall be adopted not later than 30 months after August 21, 1996.

(b) Additions and modifications to standards

(1) In general

Except as provided in paragraph (2), the Secretary shall review the standards adopted under section 1320d–2 of this title, and shall adopt modifications to the standards (including additions to the standards), as determined appropriate, but not more frequently than once every 12 months. Any addition or modification to a standard shall be completed in a manner which minimizes the disruption and cost of compliance.

(2) Special rules

(A) First 12-month period

Except with respect to additions and modifications to code sets under subparagraph (B), the Secretary may not adopt any modification to a standard adopted under this part during the 12-month period beginning on the date the standard is initially adopted, unless the Secretary determines that the modification is necessary in order to permit compliance with the standard.

(B) Additions and modifications to code sets

(i) In general

The Secretary shall ensure that procedures exist for the routine maintenance, testing, enhancement, and expansion of code sets.

(ii) Additional rules

If a code set is modified under this subsection, the modified code set shall include instructions on how data elements of health information that were encoded prior to the modification may be converted or translated so as to preserve the informational value of the data elements that existed before the modification. Any modification to a code set under this subsection shall be implemented in a manner that minimizes the disruption and cost of complying with such modification.

(Aug. 14, 1935, ch. 531, title XI, § 1174, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2026.)

§ 1320d–4. Requirements

(a) Conduct of transactions by plans

(1) In general

If a person desires to conduct a transaction referred to in section 1320d–2(a)(1) of this title with a health plan as a standard transaction—

(A) the health plan may not refuse to conduct such transaction as a standard transaction;

(B) the insurance plan may not delay such transaction, or otherwise adversely affect, or attempt to adversely affect, the person or the transaction on the ground that the transaction is a standard transaction; and

(C) the information transmitted and received in connection with the transaction shall be in the form of standard data elements of health information.

(2) Satisfaction of requirements

A health plan may satisfy the requirements under paragraph (1) by—

(A) directly transmitting and receiving standard data elements of health information; or

(B) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse, and receiving standard data elements through the health care clearinghouse.

(3) Timetable for compliance

Paragraph (1) shall not be construed to require a health plan to comply with any standard, implementation specification, or modification to a standard or specification adopted or established by the Secretary under sections 1320d–1 through 1320d–3 of this title at any time prior to the date on which the plan is required to comply with the standard or specification under subsection (b) of this section.

(b) Compliance with standards

(1) Initial compliance

(A) In general

Not later than 24 months after the date on which an initial standard or implementation specification is adopted or established under sections 1320d–1 and 1320d–2 of this title, each person to whom the standard or implementation specification applies shall comply with the standard or specification.

(B) Special rule for small health plans

In the case of a small health plan, paragraph (1) shall be applied by substituting ''36 months'' for ''24 months''. For purposes of this subsection, the Secretary shall determine the plans that qualify as small health plans.

(2) Compliance with modified standards

If the Secretary adopts a modification to a standard or implementation specification under this part, each person to whom the standard or implementation specification applies shall comply with the modified standard or implementation specification at such time as the Secretary determines appropriate, taking into account the time needed to comply due to the nature and extent of the modification. The time determined appropriate under the preceding sentence may not be earlier than the last day of the 180-day period beginning on the date such modification is adopted. The Secretary may extend the time for compliance for small health plans, if the Secretary determines that such extension is appropriate.

(3) Construction

Nothing in this subsection shall be construed to prohibit any person from complying with a standard or specification by—

(A) submitting nonstandard data elements to a health care clearinghouse for processing into standard data elements and transmission by the health care clearinghouse; or

(B) receiving standard data elements through a health care clearinghouse.

(Aug. 14, 1935, ch. 531, title XI, § 1175, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2027.)

EXTENSION OF DEADLINE FOR COVERED ENTITIES SUBMITTING COMPLIANCE PLANS

Pub. L. 107–105, § 2, Dec. 27, 2001, 115 Stat. 1003, provided that:

''(a) IN GENERAL.—

''(1) EXTENSION.—Subject to paragraph (2), notwithstanding section 1175(b)(1)(A) of the Social Security Act (42 U.S.C. 1320d–4(b)(1)(A)) and section 162.900 of title 45, Code of Federal Regulations, a health care provider, health plan (other than a small health plan), or a health care clearinghouse shall not be considered to be in noncompliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, before October 16, 2003.

''(2) CONDITION.—Paragraph (1) shall apply to a person described in such paragraph only if, before October 16, 2002, the person submits to the Secretary of Health and Human Services a plan of how the person will come into compliance with the requirements described in such paragraph not later than October 16, 2003. Such plan shall be a summary of the following:

''(A) An analysis reflecting the extent to which, and the reasons why, the person is not in compliance.

''(B) A budget, schedule, work plan, and implementation strategy for achieving compliance.

''(C) Whether the person plans to use or might use a contractor or other vendor to assist the person in achieving compliance.

''(D) A timeframe for testing that begins not later than April 16, 2003.

''(3) ELECTRONIC SUBMISSION.—Plans described in paragraph (2) may be submitted electronically.

''(4) MODEL FORM.—Not later than March 31, 2002, the Secretary of Health and Human Services shall promulgate a model form that persons may use in drafting a plan described in paragraph (2). The promulgation of such form shall be made without regard to chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act').

''(5) ANALYSIS OF PLANS; REPORTS ON SOLUTIONS.—

''(A) ANALYSIS OF PLANS.—

''(i) FURNISHING OF PLANS.—Subject to subparagraph (D), the Secretary of Health and Human Services shall furnish the National Committee on Vital and Health Statistics with a sample of the plans submitted under paragraph (2) for analysis by such Committee.

''(ii) ANALYSIS.—The National Committee on Vital and Health Statistics shall analyze the sample of the plans furnished under clause (i).

''(B) REPORTS ON SOLUTIONS.—The National Committee on Vital and Health Statistics shall regularly publish, and widely disseminate to the public, reports containing effective solutions to compliance problems identified in the plans analyzed under subparagraph (A). Such reports shall not relate specifically to any one plan but shall be written for the purpose of assisting the maximum number of persons to come into compliance by addressing the most common or challenging problems encountered by persons submitting such plans.

''(C) CONSULTATION.—In carrying out this paragraph, the National Committee on Vital and Health Statistics shall consult with each organization—

''(i) described in section 1172(c)(3)(B) of the Social Security Act (42 U.S.C. 1320d–1(c)(3)(B)); or

''(ii) designated by the Secretary of Health and Human Services under section 162.910(a) of title 45, Code of Federal Regulations.

''(D) PROTECTION OF CONFIDENTIAL INFORMATION.—

''(i) IN GENERAL.—The Secretary of Health and Human Services shall ensure that any material provided under subparagraph (A) to the National Committee on Vital and Health Statistics or any organization described in subparagraph (C) is redacted so as to prevent the disclosure of any—

''(I) trade secrets;

''(II) commercial or financial information that is privileged or confidential; and

''(III) other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

''(ii) CONSTRUCTION.—Nothing in clause (i) shall be construed to affect the application of section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'), including the exceptions from disclosure provided under subsection (b) of such section.

''(6) ENFORCEMENT THROUGH EXCLUSION FROM PARTICIPATION IN MEDICARE.—

''(A) IN GENERAL.—In the case of a person described in paragraph (1) who fails to submit a plan in accordance with paragraph (2), and who is not in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or after October 16, 2002, the person may be excluded at the discretion of the Secretary of Health and Human Services from participation (including under part C or as a contractor under sections 1816, 1842, and 1893) [42 U.S.C. 1395h, 1395u, 1395ddd] in title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

''(B) PROCEDURE.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to an exclusion under this paragraph in the same manner as such provisions apply with respect to an exclusion or proceeding under section 1128A(a) of such Act.

''(C) CONSTRUCTION.—The availability of an exclusion under this paragraph shall not be construed to affect the imposition of penalties under section 1176 of the Social Security Act (42 U.S.C. 1320d–5).

''(D) NONAPPLICABILITY TO COMPLYING PERSONS.—The exclusion under subparagraph (A) shall not apply to a person who—

''(i) submits a plan in accordance with paragraph (2); or

''(ii) who is in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or before October 16, 2002.

''(b) SPECIAL RULES.—

''(1) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) as modifying the October 16, 2003, deadline for a small health plan to comply with the requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations; or

''(B) as modifying—

''(i) the April 14, 2003, deadline for a health care provider, a health plan (other than a small health plan), or a health care clearinghouse to comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations; or

''(ii) the April 14, 2004, deadline for a small health plan to comply with the requirements of such subpart.

''(2) APPLICABILITY OF PRIVACY STANDARDS BEFORE COMPLIANCE DEADLINE FOR INFORMATION TRANSACTION STANDARDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, during the period that begins on April 14, 2003, and ends on October 16, 2003, a health care provider or, subject to subparagraph (B), a health care clearinghouse, that transmits any health information in electronic form in connection with a transaction described in subparagraph (C) shall comply with the requirements of subpart E of part 164 of title 45, Code of Federal Regulations, without regard to whether the transmission meets the standards required by part 162 of such title.

''(B) APPLICATION TO HEALTH CARE CLEARINGHOUSES.—For purposes of this paragraph, during the period described in subparagraph (A), an entity that processes or facilitates the processing of information in connection with a transaction described in subparagraph (C) and that otherwise would be treated as a health care clearinghouse shall be treated as a health care clearinghouse without regard to whether the processing or facilitation produces (or is required to produce) standard data elements or a standard transaction as required by part 162 of title 45, Code of Federal Regulations.

''(C) TRANSACTIONS DESCRIBED.—The transactions described in this subparagraph are the following:

''(i) A health care claims or equivalent encounter information transaction.

''(ii) A health care payment and remittance advice transaction.

''(iii) A coordination of benefits transaction.

''(iv) A health care claim status transaction.

''(v) An enrollment and disenrollment in a health plan transaction.

''(vi) An eligibility for a health plan transaction.

''(vii) A health plan premium payments transaction.

''(viii) A referral certification and authorization transaction.

''(c) DEFINITIONS.—In this section—

''(1) the terms 'health care provider', 'health plan', and 'health care clearinghouse' have the meaning given those terms in section 1171 of the Social Security Act (42 U.S.C. 1320d) and section 160.103 of title 45, Code of Federal Regulations;

''(2) the terms 'small health plan' and 'transaction' have the meaning given those terms in section 160.103 of title 45, Code of Federal Regulations; and

''(3) the terms 'health care claims or equivalent encounter information transaction', 'health care payment and remittance advice transaction', 'coordination of benefits transaction', 'health care claim status transaction', 'enrollment and disenrollment in a health plan transaction', 'eligibility for a health plan transaction', 'health plan premium payments transaction', and 'referral certification and authorization transaction' have the meanings given those terms in sections 162.1101, 162.1601, 162.1801, 162.1401, 162.1501, 162.1201, 162.1701, and 162.1301 of title 45, Code of Federal Regulations, respectively.''

§ 1320d–5. General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b) of this section, the Secretary shall impose on any person who violates a provision of this part—

(A) in the case of a violation of such provision in which it is established that the person did not know (and by exercising reasonable diligence would not have known) that such person violated such provision, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(A) but not to exceed the amount described in paragraph (3)(D);

(B) in the case of a violation of such provision in which it is established that the violation was due to reasonable cause and not to willful neglect, a penalty for each such violation of an amount that is at least the amount described in paragraph (3)(B) but not to exceed the amount described in paragraph (3)(D); and

(C) in the case of a violation of such provision in which it is established that the violation was due to willful neglect—

(i) if the violation is corrected as described in subsection (b)(3)(A),[1] a penalty

[1] So in original. Probably should be ''(b)(2)(A),''.

in an amount that is at least the amount described in paragraph (3)(C) but not to exceed the amount described in paragraph (3)(D); and

(ii) if the violation is not corrected as described in such subsection, a penalty in an amount that is at least the amount described in paragraph (3)(D).

In determining the amount of a penalty under this section for a violation, the Secretary shall base such determination on the nature and extent of the violation and the nature and extent of the harm resulting from such violation.

(2) Procedures

The provisions of section 1320a–7a of this title (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1320a–7a of this title.

(3) Tiers of penalties described

For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

(A) the amount described in this subparagraph is $100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $25,000;

(B) the amount described in this subparagraph is $1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $100,000;

(C) the amount described in this subparagraph is $10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $250,000; and

(D) the amount described in this subparagraph is $50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed $1,500,000.

(b) Limitations

(1) Offenses otherwise punishable

No penalty may be imposed under subsection (a) and no damages obtained under subsection (d) with respect to an act if a penalty has been imposed under section 1320d–6 of this title with respect to such act.

(2) Failures due to reasonable cause

(A) In general

Except as provided in subparagraph (B) or subsection (a)(1)(C), no penalty may be imposed under subsection (a) and no damages obtained under subsection (d) if the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty or damages knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) Extension of period

(i) No penalty

With respect to the imposition of a penalty by the Secretary under subsection (a), the period referred to in subparagraph (A) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

(ii) Assistance

If the Secretary determines that a person failed to comply because the person was unable to comply, the Secretary may provide technical assistance to the person during the period described in subparagraph (A). Such assistance shall be provided in any manner determined appropriate by the Secretary.

(3) Reduction

In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under subsection (a) and any damages under subsection (d) that is[2] not entirely waived under paragraph (3)[3] may be waived to the extent that the payment of such penalty[4] would be excessive relative to the compliance failure involved.

(c) Noncompliance due to willful neglect

(1) In general

A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

(2) Required investigation

For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.

(d) Enforcement by State attorneys general

(1) Civil action

Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further such violation by the defendant; or

(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

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[2] So in original. Probably should be ''are''.

[3] So in original. Probably should be ''(2)''.

[4] So in original. The words ''or damages'' probably should appear after ''penalty''.

(2) Statutory damages

(A) In general

For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to $100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1320d–9(b)(3) of this title) for violations of subsection (a).

(B) Limitation

The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

(C) Reduction of damages

In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

(3) Attorney fees

In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(4) Notice to Secretary

The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein; and

(C) to file petitions for appeal.

(5) Construction

For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

(6) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) Limitation on State action while Federal action is pending

If the Secretary has instituted an action against a person under subsection (a) with respect to a specific violation of this part, no State attorney general may bring an action under this subsection against the person with respect to such violation during the pendency of that action.

(8) Application of CMP statute of limitation

A civil action may not be instituted with respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence of section 1320a–7a(c)(1) of this title.

(e) Allowing continued use of corrective action

Nothing in this section shall be construed as preventing the Office for Civil Rights of the Department of Health and Human Services from continuing, in its discretion, to use corrective action without a penalty in cases where the person did not know (and by exercising reasonable diligence would not have known) of the violation involved.

(Aug. 14, 1935, ch. 531, title XI, §1176, as added Pub. L. 104–191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2028; amended Pub. L. 111–5, div. A, title XIII, §13410(a)(1), (d)(1)–(3), (e)(1), (2), (f), Feb. 17, 2009, 123 Stat. 271–276.)

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–5, §13410(d)(1), substituted ''who violates a provision of this part—'' for ''who violates a provision of this part a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.'', added subpars. (A) to (C), and inserted concluding provisions.

Subsec. (a)(3). Pub. L. 111–5, §13410(d)(2), added par. (3).

Subsec. (b)(1). Pub. L. 111–5, §13410(e)(2)(A), substituted ''No penalty may be imposed under subsection (a) and no damages obtained under subsection (d)'' for ''A penalty may not be imposed under subsection (a)''.

Pub. L. 111–5, §13410(a)(1)(A), substituted ''a penalty has been imposed under section 1320d–6 of this title with respect to such act'' for ''the act constitutes an offense punishable under section 1320d–6 of this title''.

Subsec. (b)(2). Pub. L. 111–5, §13410(d)(3)(A), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: ''A penalty may not be imposed under subsection (a) of this section with respect to a provision of this part if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision.''

Subsec. (b)(2)(A). Pub. L. 111–5, §13410(e)(2)(B)(ii), which directed amendment of cl. (ii) of subpar. (A) by inserting ''or damages'' after ''the penalty'', was executed by making the insertion in subpar. (A) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 111–5, §13410(d)(3)(B)(i), which struck out the cl. (ii) designation. See below.

Pub. L. 111–5, §13410(e)(2)(B)(i), substituted ''no penalty may be imposed under subsection (a) and no damages obtained under subsection (d)'' for ''a penalty may not be imposed under subsection (a)''.

Pub. L. 111–5, §13410(d)(3)(B)(i), substituted ''in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected'' for ''in subparagraph (B), a penalty may not be imposed under subsection (a) of this section if—

''(i) the failure to comply was due to reasonable cause and not to willful neglect; and

''(ii) the failure to comply is corrected''.

Subsec. (b)(2)(B). Pub. L. 111–5, § 13410(d)(3)(B)(ii), substituted ''(A)'' for ''(A)(ii)'' in two places.

Subsec. (b)(2)(B)(i). Pub. L. 111–5, § 13410(e)(2)(C), substituted ''With respect to the imposition of a penalty by the Secretary under subsection (a), the period'' for ''The period''.

Subsec. (b)(3). Pub. L. 111–5, § 13410(e)(2)(D), inserted ''and any damages under subsection (d)'' after ''any penalty under subsection (a)''.

Pub. L. 111–5, § 13410(d)(3)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4). Pub. L. 111–5, § 13410(d)(3)(A), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 111–5, § 13410(a)(1)(B), added subsec. (c).

Subsec. (d). Pub. L. 111–5, § 13410(e)(1), added subsec. (d).

Subsec. (e). Pub. L. 111–5, § 13410(f), added subsec. (e).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 effective 12 months after Feb. 17, 2009, except as otherwise specifically provided, see section 13423 of Pub. L. 111–5, set out as an Effective Date note under section 17931 of this title.

Amendment by section 13410(a)(1) of Pub. L. 111–5 applicable to penalties imposed on or after the date that is 24 months after Feb. 17, 2009, see section 17939(b)(1) of this title.

Amendment by section 13410(d)(1)–(3) of Pub. L. 111–5 applicable to violations occurring after Feb. 17, 2009, see section 17939(d)(4) of this title.

Amendment by section 13410(e)(1), (2) of Pub. L. 111–5 applicable to violations occurring after Feb. 17, 2009, see section 17939(e)(3) of this title.

§ 1320d–6. Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part—

(1) uses or causes to be used a unique health identifier;

(2) obtains individually identifiable health information relating to an individual; or

(3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b) of this section. For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d–9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.

(b) Penalties

A person described in subsection (a) of this section shall—

(1) be fined not more than $50,000, imprisoned not more than 1 year, or both;

(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; and

(3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1177, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029; amended Pub. L. 111–5, div. A, title XIII, § 13409, Feb. 17, 2009, 123 Stat. 271.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–5 inserted at end ''For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d–9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–5 effective 12 months after Feb. 17, 2009, see section 13423 of Pub. L. 111–5, set out as an Effective Date note under section 17931 of this title.

§ 1320d–7. Effect on State law

(a) General effect

(1) General rule

Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions

A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d–1 through 1320d–3 of this title, shall not supersede a contrary provision of State law, if the provision of State law—

(A) is a provision the Secretary determines—

(i) is necessary—

(I) to prevent fraud and abuse;

(II) to ensure appropriate State regulation of insurance and health plans;

(III) for State reporting on health care delivery or costs; or

(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) Public health

Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) State regulatory reporting

Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

(Aug. 14, 1935, ch. 531, title XI, § 1178, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029.)

REFERENCES IN TEXT

Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2)(B), is section 264(c)(2) of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

§ 1320d–8. Processing payment transactions by financial institutions

To the extent that an entity is engaged in activities of a financial institution (as defined in section 3401 of title 12), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:

(1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check, or electronic funds transfer.

(2) The request for, or the use or disclosure of, information by the entity with respect to a payment described in paragraph (1)—

(A) for transferring receivables;

(B) for auditing;

(C) in connection with—

(i) a customer dispute; or

(ii) an inquiry from, or to, a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with—

(i) a civil or criminal subpoena; or

(ii) a Federal or State law regulating the entity.

(Aug. 14, 1935, ch. 531, title XI, § 1179, as added Pub. L. 104–191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2030.)

§ 1320d–9. Application of HIPAA regulations to genetic information

(a) In general

The Secretary shall revise the HIPAA privacy regulation (as defined in subsection (b)) so it is consistent with the following:

(1) Genetic information shall be treated as health information described in section 1320d(4)(B) of this title.

(2) The use or disclosure by a covered entity that is a group health plan, health insurance issuer that issues health insurance coverage, or issuer of a medicare supplemental policy of protected health information that is genetic information about an individual for underwriting purposes under the group health plan, health insurance coverage, or medicare supplemental policy shall not be a permitted use or disclosure.

(b) Definitions

For purposes of this section:

(1) Genetic information; genetic test; family member

The terms ''genetic information'', ''genetic test'', and ''family member'' have the meanings given such terms in section 300gg–91 of this title, as amended by the Genetic Information Nondiscrimination Act of 2007.[1]

(2) Group health plan; health insurance coverage; medicare supplemental policy

The terms ''group health plan'' and ''health insurance coverage'' have the meanings given such terms under section 300gg–91 of this title, and the term ''medicare supplemental policy'' has the meaning given such term in section 1395ss(g) of this title.

(3) HIPAA privacy regulation

The term ''HIPAA privacy regulation'' means the regulations promulgated by the Secretary under this part and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(4) Underwriting purposes

The term ''underwriting purposes'' means, with respect to a group health plan, health insurance coverage, or a medicare supplemental policy—

(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for, or determination of, benefits under the plan, coverage, or policy;

(B) the computation of premium or contribution amounts under the plan, coverage, or policy;

(C) the application of any pre-existing condition exclusion under the plan, coverage, or policy; and

(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(c) Procedure

The revisions under subsection (a) shall be made by notice in the Federal Register published not later than 60 days after May 21, 2008, and shall be effective upon publication, without opportunity for any prior public comment, but may be revised, consistent with this section, after opportunity for public comment.

(d) Enforcement

In addition to any other sanctions or remedies that may be available under law, a covered entity that is a group health plan, health insurance issuer, or issuer of a medicare supplemental policy and that violates the HIPAA privacy regulation (as revised under subsection (a) or otherwise) with respect to the use or disclosure of genetic information shall be subject to the penalties described in sections 1320d–5 and 1320d–6 of this title in the same manner and to the same extent that such penalties apply to violations of this part.

(Aug. 14, 1935, ch. 531, title XI, § 1180, as added Pub. L. 110–233, title I, § 105(a), May 21, 2008, 122 Stat. 903.)

REFERENCES IN TEXT

The Genetic Information Nondiscrimination Act of 2007, referred to in subsec. (b)(1), probably means the

[1] See References in Text note below.

Genetic Information Nondiscrimination Act of 2008, Pub. L. 110–233, May 21, 2008, 122 Stat. 881. For complete classification of this Act to the Code, see Short Title note set out under section 2000ff of this title and Tables.

Section 264 of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b)(3), is section 264 of Pub. L. 104–191, which is set out as a note under section 1320d–2 of this title.

EFFECTIVE DATE

Pub. L. 110–233, title I, § 105(b)(2), May 21, 2008, 122 Stat. 905, provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date that is 1 year after the date of the enactment of this Act [May 21, 2008].''

REGULATIONS

Pub. L. 110–233, title I, § 105(b)(1), May 21, 2008, 122 Stat. 905, provided that: ''Not later than 12 months after the date of the enactment of this Act [May 21, 2008], the Secretary of Health and Human Services shall issue final regulations to carry out the revision required by section 1180(a) of the Social Security Act [42 U.S.C. 1320d–9(a)], as added by subsection (a). The Secretary has the sole authority to promulgate such regulations, but shall promulgate such regulations in consultation with the Secretaries of Labor and the Treasury.''

PART D—COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH

§ 1320e. Comparative clinical effectiveness research

(a) Definitions

In this section:

(1) Board

The term ''Board'' means the Board of Governors established under subsection (f).

(2) Comparative clinical effectiveness research; research

(A) In general

The terms ''comparative clinical effectiveness research'' and ''research'' mean research evaluating and comparing health outcomes and the clinical effectiveness, risks, and benefits of 2 or more medical treatments, services, and items described in subparagraph (B).

(B) Medical treatments, services, and items described

The medical treatments, services, and items described in this subparagraph are health care interventions, protocols for treatment, care management, and delivery, procedures, medical devices, diagnostic tools, pharmaceuticals (including drugs and biologicals), integrative health practices, and any other strategies or items being used in the treatment, management, and diagnosis of, or prevention of illness or injury in, individuals.

(3) Conflict of interest

The term ''conflict of interest'' means an association, including a financial or personal association, that have[1] the potential to bias or have[1] the appearance of biasing an individual's decisions in matters related to the Institute or the conduct of activities under this section.

(4) Real conflict of interest

The term ''real conflict of interest'' means any instance where a member of the Board, the methodology committee established under subsection (d)(6), or an advisory panel appointed under subsection (d)(4), or a close relative of such member, has received or could receive either of the following:

(A) A direct financial benefit of any amount deriving from the result or findings of a study conducted under this section.

(B) A financial benefit from individuals or companies that own or manufacture medical treatments, services, or items to be studied under this section that in the aggregate exceeds $10,000 per year. For purposes of the preceding sentence, a financial benefit includes honoraria, fees, stock, or other financial benefit and the current value of the member or close relative's already existing stock holdings, in addition to any direct financial benefit deriving from the results or findings of a study conducted under this section.

(b) Patient-Centered Outcomes Research Institute

(1) Establishment

There is authorized to be established a nonprofit corporation, to be known as the ''Patient-Centered Outcomes Research Institute'' (referred to in this section as the ''Institute'') which is neither an agency nor establishment of the United States Government.

(2) Application of provisions

The Institute shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

(3) Funding of comparative clinical effectiveness research

For fiscal year 2010 and each subsequent fiscal year, amounts in the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the ''PCORTF'') under section 9511 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to the Institute to carry out this section.

(c) Purpose

The purpose of the Institute is to assist patients, clinicians, purchasers, and policy-makers in making informed health decisions by advancing the quality and relevance of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, monitored, and managed through research and evidence synthesis that considers variations in patient subpopulations, and the dissemination of research findings with respect to the relative health outcomes, clinical effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).

[1] So in original. Probably should be ''has''.

(d) Duties

(1) Identifying research priorities and establishing research project agenda

(A) Identifying research priorities

The Institute shall identify national priorities for research, taking into account factors of disease incidence, prevalence, and burden in the United States (with emphasis on chronic conditions), gaps in evidence in terms of clinical outcomes, practice variations and health disparities in terms of delivery and outcomes of care, the potential for new evidence to improve patient health, well-being, and the quality of care, the effect on national expenditures associated with a health care treatment, strategy, or health conditions, as well as patient needs, outcomes, and preferences, the relevance to patients and clinicians in making informed health decisions, and priorities in the National Strategy for quality care established under section 399H[2] of the Public Health Service Act that are consistent with this section.

(B) Establishing research project agenda

The Institute shall establish and update a research project agenda for research to address the priorities identified under subparagraph (A), taking into consideration the types of research that might address each priority and the relative value (determined based on the cost of conducting research compared to the potential usefulness of the information produced by research) associated with the different types of research, and such other factors as the Institute determines appropriate.

(2) Carrying out research project agenda

(A) Research

The Institute shall carry out the research project agenda established under paragraph (1)(B) in accordance with the methodological standards adopted under paragraph (9) using methods, including the following:

(i) Systematic reviews and assessments of existing and future research and evidence including original research conducted subsequent to March 23, 2010.

(ii) Primary research, such as randomized clinical trials, molecularly informed trials, and observational studies.

(iii) Any other methodologies recommended by the methodology committee established under paragraph (6) that are adopted by the Board under paragraph (9).

(B) Contracts for the management of funding and conduct of research

(i) Contracts

(I) In general

In accordance with the research project agenda established under paragraph (1)(B), the Institute shall enter into contracts for the management of funding and conduct of research in accordance with the following:

(aa) Appropriate agencies and instrumentalities of the Federal Government.

(bb) Appropriate academic research, private sector research, or study-conducting entities.

(II) Preference

In entering into contracts under subclause (I), the Institute shall give preference to the Agency for Healthcare Research and Quality and the National Institutes of Health, but only if the research to be conducted or managed under such contract is authorized by the governing statutes of such Agency or Institutes.

(ii) Conditions for contracts

A contract entered into under this subparagraph shall require that the agency, instrumentality, or other entity—

(I) abide by the transparency and conflicts of interest requirements under subsection (h) that apply to the Institute with respect to the research managed or conducted under such contract;

(II) comply with the methodological standards adopted under paragraph (9) with respect to such research;

(III) consult with the expert advisory panels for clinical trials and rare disease appointed under clauses (ii) and (iii), respectively, of paragraph (4)(A);

(IV) subject to clause (iv), permit a researcher who conducts original research, as described in subparagraph (A)(ii), under the contract for the agency, instrumentality, or other entity to have such research published in a peer-reviewed journal or other publication, as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate;

(V) have appropriate processes in place to manage data privacy and meet ethical standards for the research;

(VI) comply with the requirements of the Institute for making the information available to the public under paragraph (8); and

(VII) comply with other terms and conditions determined necessary by the Institute to carry out the research agenda adopted under paragraph (2).

(iii) Coverage of copayments or coinsurance

A contract entered into under this subparagraph may allow for the coverage of copayments or coinsurance, or allow for other appropriate measures, to the extent that such coverage or other measures are necessary to preserve the validity of a research project, such as in the case where the research project must be blinded.

(iv) Subsequent use of the data

The Institute shall not allow the subsequent use of data from original research in work-for-hire contracts with individuals,

[2] See References in Text note below.

entities, or instrumentalities that have a financial interest in the results, unless approved under a data use agreement with the Institute.

(C) Review and update of evidence

The Institute shall review and update evidence on a periodic basis as appropriate.

(D) Taking into account potential differences

Research shall be designed, as appropriate, to take into account the potential for differences in the effectiveness of health care treatments, services, and items as used with various subpopulations, such as racial and ethnic minorities, women, age, and groups of individuals with different comorbidities, genetic and molecular sub-types, or quality of life preferences and include members of such subpopulations as subjects in the research as feasible and appropriate.

(E) Differences in treatment modalities

Research shall be designed, as appropriate, to take into account different characteristics of treatment modalities that may affect research outcomes, such as the phase of the treatment modality in the innovation cycle and the impact of the skill of the operator of the treatment modality.

(3) Data collection

(A) In general

The Secretary shall, with appropriate safeguards for privacy, make available to the Institute such data collected by the Centers for Medicare & Medicaid Services under the programs under subchapters XVIII, XIX, and XXI, as well as provide access to the data networks developed under section 937(f) of the Public Health Service Act [42 U.S.C. 299b–37(f)], as the Institute and its contractors may require to carry out this section. The Institute may also request and obtain data from Federal, State, or private entities, including data from clinical databases and registries.

(B) Use of data

The Institute shall only use data provided to the Institute under subparagraph (A) in accordance with laws and regulations governing the release and use of such data, including applicable confidentiality and privacy standards.

(4) Appointing expert advisory panels

(A) Appointment

(i) In general

The Institute may appoint permanent or ad hoc expert advisory panels as determined appropriate to assist in identifying research priorities and establishing the research project agenda under paragraph (1) and for other purposes.

(ii) Expert advisory panels for clinical trials

The Institute shall appoint expert advisory panels in carrying out randomized clinical trials under the research project agenda under paragraph (2)(A)(ii). Such expert advisory panels shall advise the Institute and the agency, instrumentality, or entity conducting the research on the research question involved and the research design or protocol, including important patient subgroups and other parameters of the research. Such panels shall be available as a resource for technical questions that may arise during the conduct of such research.

(iii) Expert advisory panel for rare disease

In the case of a research study for rare disease, the Institute shall appoint an expert advisory panel for purposes of assisting in the design of the research study and determining the relative value and feasibility of conducting the research study.

(B) Composition

An expert advisory panel appointed under subparagraph (A) shall include representatives of practicing and research clinicians, patients, and experts in scientific and health services research, health services delivery, and evidence-based medicine who have experience in the relevant topic, and as appropriate, experts in integrative health and primary prevention strategies. The Institute may include a technical expert of each manufacturer or each medical technology that is included under the relevant topic, project, or category for which the panel is established.

(5) Supporting patient and consumer representatives

The Institute shall provide support and resources to help patient and consumer representatives effectively participate on the Board and expert advisory panels appointed by the Institute under paragraph (4).

(6) Establishing methodology committee

(A) In general

The Institute shall establish a standing methodology committee to carry out the functions described in subparagraph (C).

(B) Appointment and composition

The methodology committee established under subparagraph (A) shall be composed of not more than 15 members appointed by the Comptroller General of the United States. Members appointed to the methodology committee shall be experts in their scientific field, such as health services research, clinical research, comparative clinical effectiveness research, biostatistics, genomics, and research methodologies. Stakeholders with such expertise may be appointed to the methodology committee. In addition to the members appointed under the first sentence, the Directors of the National Institutes of Health and the Agency for Healthcare Research and Quality (or their designees) shall each be included as members of the methodology committee.

(C) Functions

Subject to subparagraph (D), the methodology committee shall work to develop and improve the science and methods of comparative clinical effectiveness research

by, not later than 18 months after the establishment of the Institute, directly or through subcontract, developing and periodically updating the following:

(i) Methodological standards for research. Such methodological standards shall provide specific criteria for internal validity, generalizability, feasibility, and timeliness of research and for health outcomes measures, risk adjustment, and other relevant aspects of research and assessment with respect to the design of research. Any methodological standards developed and updated under this subclause[3] shall be scientifically based and include methods by which new information, data, or advances in technology are considered and incorporated into ongoing research projects by the Institute, as appropriate. The process for developing and updating such standards shall include input from relevant experts, stakeholders, and decisionmakers, and shall provide opportunities for public comment. Such standards shall also include methods by which patient subpopulations can be accounted for and evaluated in different types of research. As appropriate, such standards shall build on existing work on methodological standards for defined categories of health interventions and for each of the major categories of comparative clinical effectiveness research methods (determined as of March 23, 2010).

(ii) A translation table that is designed to provide guidance and act as a reference for the Board to determine research methods that are most likely to address each specific research question.

(D) Consultation and conduct of examinations

The methodology committee may consult and contract with the Institute of Medicine of the National Academies and academic, nonprofit, or other private and governmental entities with relevant expertise to carry out activities described in subparagraph (C) and may consult with relevant stakeholders to carry out such activities.

(E) Reports

The methodology committee shall submit reports to the Board on the committee's performance of the functions described in subparagraph (C). Reports shall contain recommendations for the Institute to adopt methodological standards developed and updated by the methodology committee as well as other actions deemed necessary to comply with such methodological standards.

(7) Providing for a peer-review process for primary research

(A) In general

The Institute shall ensure that there is a process for peer review of primary research described in subparagraph (A)(ii) of paragraph (2) that is conducted under such paragraph. Under such process—

(i) evidence from such primary research shall be reviewed to assess scientific integrity and adherence to methodological standards adopted under paragraph (9); and

(ii) a list of the names of individuals contributing to any peer-review process during the preceding year or years shall be made public and included in annual reports in accordance with paragraph (10)(D).

(B) Composition

Such peer-review process shall be designed in a manner so as to avoid bias and conflicts of interest on the part of the reviewers and shall be composed of experts in the scientific field relevant to the research under review.

(C) Use of existing processes

(i) Processes of another entity

In the case where the Institute enters into a contract or other agreement with another entity for the conduct or management of research under this section, the Institute may utilize the peer-review process of such entity if such process meets the requirements under subparagraphs (A) and (B).

(ii) Processes of appropriate medical journals

The Institute may utilize the peer-review process of appropriate medical journals if such process meets the requirements under subparagraphs (A) and (B).

(8) Release of research findings

(A) In general

The Institute shall, not later than 90 days after the conduct or receipt of research findings under this part, make such research findings available to clinicians, patients, and the general public. The Institute shall ensure that the research findings—

(i) convey the findings of research in a manner that is comprehensible and useful to patients and providers in making health care decisions;

(ii) fully convey findings and discuss considerations specific to certain subpopulations, risk factors, and comorbidities, as appropriate;

(iii) include limitations of the research and what further research may be needed as appropriate;

(iv) do not include practice guidelines, coverage recommendations, payment, or policy recommendations; and

(v) not include any data which would violate the privacy of research participants or any confidentiality agreements made with respect to the use of data under this section.

(B) Definition of research findings

In this paragraph, the term ''research findings'' means the results of a study or assessment.

(9) Adoption

Subject to subsection (h)(1), the Institute shall adopt the national priorities identified under paragraph (1)(A), the research project

[3] So in original. Probably should be ''clause''.

agenda established under paragraph (1)(B), the methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i), and any peer-review process provided under paragraph (7) by majority vote. In the case where the Institute does not adopt such processes in accordance with the preceding sentence, the processes shall be referred to the appropriate staff or entity within the Institute (or, in the case of the methodological standards, the methodology committee) for further review.

(10) Annual reports

The Institute shall submit an annual report to Congress and the President, and shall make the annual report available to the public. Such report shall contain—

(A) a description of the activities conducted under this section, research priorities identified under paragraph (1)(A) and methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i) that are adopted under paragraph (9) during the preceding year;

(B) the research project agenda and budget of the Institute for the following year;

(C) any administrative activities conducted by the Institute during the preceding year;

(D) the names of individuals contributing to any peer-review process under paragraph (7), without identifying them with a particular research project; and

(E) any other relevant information (including information on the membership of the Board, expert advisory panels, methodology committee, and the executive staff of the Institute, any conflicts of interest with respect to these individuals, and any bylaws adopted by the Board during the preceding year).

(e) Administration

(1) In general

Subject to paragraph (2), the Board shall carry out the duties of the Institute.

(2) Nondelegable duties

The activities described in subsections (d)(1) and (d)(9) are nondelegable.

(f) Board of Governors

(1) In general

The Institute shall have a Board of Governors, which shall consist of the following members:

(A) The Director of Agency[4] for Healthcare Research and Quality (or the Director's designee).

(B) The Director of the National Institutes of Health (or the Director's designee).

(C) Seventeen[5] members appointed, not later than 6 months after March 23, 2010, by the Comptroller General of the United States as follows:

(i) 3 members representing patients and health care consumers.

(ii) 7 members representing physicians and providers, including 4 members representing physicians (at least 1 of whom is a surgeon), 1 nurse, 1 State-licensed integrative health care practitioner, and 1 representative of a hospital.

(iii) 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits.

(iv) 3 members representing pharmaceutical, device, and diagnostic manufacturers or developers.

(v) 1 member representing quality improvement or independent health service researchers.

(vi) 2 members representing the Federal Government or the States, including at least 1 member representing a Federal health program or agency.

(2) Qualifications

The Board shall represent a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics. In appointing the Board, the Comptroller General of the United States shall consider and disclose any conflicts of interest in accordance with subsection (h)(4)(B). Members of the Board shall be recused from relevant Institute activities in the case where the member (or an immediate family member of such member) has a real conflict of interest directly related to the research project or the matter that could affect or be affected by such participation.

(3) Terms; vacancies

A member of the Board shall be appointed for a term of 6 years, except with respect to the members first appointed, whose terms of appointment shall be staggered evenly over 2-year increments. No individual shall be appointed to the Board for more than 2 terms. Vacancies shall be filled in the same manner as the original appointment was made.

(4) Chairperson and Vice-Chairperson

The Comptroller General of the United States shall designate a Chairperson and Vice Chairperson of the Board from among the members of the Board. Such members shall serve as Chairperson or Vice Chairperson for a period of 3 years.

(5) Compensation

Each member of the Board who is not an officer or employee of the Federal Government shall be entitled to compensation (equivalent to the rate provided for level IV of the Executive Schedule under section 5315 of title 5) and expenses incurred while performing the duties of the Board. An officer or employee of the Federal government who is a member of the Board shall be exempt from compensation.

(6) Director and staff; experts and consultants

The Board may employ and fix the compensation of an Executive Director and such other personnel as may be necessary to carry out the duties of the Institute and may seek such assistance and support of, or contract with, experts and consultants that may be

[4] So in original. Probably should be preceded by ''the''.

[5] So in original. Probably should be ''Nineteen''.

necessary for the performance of the duties of the Institute.

(7) Meetings and hearings

The Board shall meet and hold hearings at the call of the Chairperson or a majority of its members. Meetings not solely concerning matters of personnel shall be advertised at least 7 days in advance and open to the public. A majority of the Board members shall constitute a quorum, but a lesser number of members may meet and hold hearings.

(g) Financial and governmental oversight

(1) Contract for audit

The Institute shall provide for the conduct of financial audits of the Institute on an annual basis by a private entity with expertise in conducting financial audits.

(2) Review and annual reports

(A) Review

The Comptroller General of the United States shall review the following:

(i) Not less frequently than on an annual basis, the financial audits conducted under paragraph (1).

(ii) Not less frequently than every 5 years, the processes established by the Institute, including the research priorities and the conduct of research projects, in order to determine whether information produced by such research projects is objective and credible, is produced in a manner consistent with the requirements under this section, and is developed through a transparent process.

(iii) Not less frequently than every 5 years, the dissemination and training activities and data networks established under section 937 of the Public Health Service Act [42 U.S.C. 299b–37], including the methods and products used to disseminate research, the types of training conducted and supported, and the types and functions of the data networks established, in order to determine whether the activities and data are produced in a manner consistent with the requirements under such section.

(iv) Not less frequently than every 5 years, the overall effectiveness of activities conducted under this section and the dissemination, training, and capacity building activities conducted under section 937 of the Public Health Service Act. Such review shall include an analysis of the extent to which research findings are used by health care decision-makers, the effect of the dissemination of such findings on reducing practice variation and disparities in health care, and the effect of the research conducted and disseminated on innovation and the health care economy of the United States.

(v) Not later than 8 years after March 23, 2010, the adequacy and use of the funding for the Institute and the activities conducted under section 937 of the Public Health Service Act, including a determination as to whether, based on the utilization of research findings by public and private payers, funding sources for the Patient-Centered Outcomes Research Trust Fund under section 9511 of the Internal Revenue Code of 1986 are appropriate and whether such sources of funding should be continued or adjusted.

(B) Annual reports

Not later than April 1 of each year, the Comptroller General of the United States shall submit to Congress a report containing the results of the review conducted under subparagraph (A) with respect to the preceding year (or years, if applicable), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(h) Ensuring transparency, credibility, and access

The Institute shall establish procedures to ensure that the following requirements for ensuring transparency, credibility, and access are met:

(1) Public comment periods

The Institute shall provide for a public comment period of not less than 45 days and not more than 60 days prior to the adoption under subsection (d)(9) of the national priorities identified under subsection (d)(1)(A), the research project agenda established under subsection (d)(1)(B), the methodological standards developed and updated by the methodology committee under subsection (d)(6)(C)(i), and the peer-review process provided under paragraph (7), and after the release of draft findings with respect to systematic reviews of existing research and evidence.

(2) Additional forums

The Institute shall support forums to increase public awareness and obtain and incorporate public input and feedback through media (such as an Internet website) on research priorities, research findings, and other duties, activities, or processes the Institute determines appropriate.

(3) Public availability

The Institute shall make available to the public and disclose through the official public Internet website of the Institute the following:

(A) Information contained in research findings as specified in subsection (d)(9).

(B) The process and methods for the conduct of research, including the identity of the entity and the investigators conducing[6] such research and any conflicts of interests of such parties, any direct or indirect links the entity has to industry, and research protocols, including measures taken, methods of research and analysis, research results, and such other information the Institute determines appropriate)[7] concurrent with the release of research findings.

(C) Notice of public comment periods under paragraph (1), including deadlines for public comments.

[6] So in original. Probably should be ''conducting''.

[7] So in original.

(D) Subsequent comments received during each of the public comment periods.

(E) In accordance with applicable laws and processes and as the Institute determines appropriate, proceedings of the Institute.

(4) Disclosure of conflicts of interest

(A) In general

A conflict of interest shall be disclosed in the following manner:

(i) By the Institute in appointing members to an expert advisory panel under subsection (d)(4), in selecting individuals to contribute to any peer-review process under subsection (d)(7), and for employment as executive staff of the Institute.

(ii) By the Comptroller General in appointing members of the methodology committee under subsection (d)(6);

(iii) By the Institute in the annual report under subsection (d)(10), except that, in the case of individuals contributing to any such peer review process, such description shall be in a manner such that those individuals cannot be identified with a particular research project.

(B) Manner of disclosure

Conflicts of interest shall be disclosed as described in subparagraph (A) as soon as practicable on the Internet web site of the Institute and of the Government Accountability Office. The information disclosed under the preceding sentence shall include the type, nature, and magnitude of the interests of the individual involved, except to the extent that the individual recuses himself or herself from participating in the consideration of or any other activity with respect to the study as to which the potential conflict exists.

(i) Rules

The Institute,[7] its Board or staff, shall be prohibited from accepting gifts, bequeaths,[8] or donations of services or property. In addition, the Institute shall be prohibited from establishing a corporation or generating revenues from activities other than as provided under this section.

(j) Rules of construction

(1)[9] Coverage

Nothing in this section shall be construed—

(A) to permit the Institute to mandate coverage, reimbursement, or other policies for any public or private payer; or

(B) as preventing the Secretary from covering the routine costs of clinical care received by an individual entitled to, or enrolled for, benefits under subchapter XVIII, XIX, or XXI in the case where such individual is participating in a clinical trial and such costs would otherwise be covered under such subchapter with respect to the beneficiary.

(Aug. 14, 1935, ch. 531, title XI, §1181, as added and amended Pub. L. 111–148, title VI, §6301(a), title X, §10602, Mar. 23, 2010, 124 Stat. 727, 1005.)

[8] So in original. Probably should be ''bequests''.

[9] So in original. No par. (2) has been enacted.

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(2), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

The Internal Revenue Code of 1986, referred to in subsecs. (b)(3) and (g)(2)(A)(v), is classified generally to Title 26, Internal Revenue Code.

Section 399H of the Public Health Service Act, referred to in subsec. (d)(1)(A), probably means section 399HH of act July 1, 1944, which is classified to section 280j of this title.

AMENDMENTS

2010—Subsec. (d)(2)(B)(ii)(IV). Pub. L. 111–148, §10602(1)(A), inserted '', as described in subparagraph (A)(ii),'' after ''original research'' and '', as long as the researcher enters into a data use agreement with the Institute for use of the data from the original research, as appropriate'' after ''publication''.

Subsec. (d)(2)(B)(iv). Pub. L. 111–148, §10602(1)(B), amended cl. (iv) generally. Prior to amendment, text read as follows: ''Any research published under clause (ii)(IV) shall be within the bounds of and entirely consistent with the evidence and findings produced under the contract with the Institute under this subparagraph. If the Institute determines that those requirements are not met, the Institute shall not enter into another contract with the agency, instrumentality, or entity which managed or conducted such research for a period determined appropriate by the Institute (but not less than 5 years).''

Subsec. (d)(8)(A)(iv). Pub. L. 111–148, §10602(2), substituted ''do not include'' for ''not be construed as mandates for''.

Subsec. (f)(1)(C)(ii). Pub. L. 111–148, §10602(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''5 members representing physicians and providers, including at least 1 surgeon, nurse, State-licensed integrative health care practitioner, and representative of a hospital.''

§ 1320e–1. Limitations on certain uses of comparative clinical effectiveness research

(a) The Secretary may only use evidence and findings from research conducted under section 1320e of this title to make a determination regarding coverage under subchapter XVIII if such use is through an iterative and transparent process which includes public comment and considers the effect on subpopulations.

(b) Nothing in section 1320e of this title shall be construed as—

(1) superceding or modifying the coverage of items or services under subchapter XVIII that the Secretary determines are reasonable and necessary under section 1395y(*l*)(1) of this title; or

(2) authorizing the Secretary to deny coverage of items or services under such subchapter solely on the basis of comparative clinical effectiveness research.

(c)(1) The Secretary shall not use evidence or findings from comparative clinical effectiveness research conducted under section 1320e of this title in determining coverage, reimbursement, or incentive programs under subchapter XVIII in a manner that treats extending the life of an elderly, disabled, or terminally ill individual as of lower value than extending the life of an individual who is younger, nondisabled, or not terminally ill.

(2) Paragraph (1) shall not be construed as preventing the Secretary from using evidence or findings from such comparative clinical effec-

tiveness research in determining coverage, reimbursement, or incentive programs under subchapter XVIII based upon a comparison of the difference in the effectiveness of alternative treatments in extending an individual's life due to the individual's age, disability, or terminal illness.

(d)(1) The Secretary shall not use evidence or findings from comparative clinical effectiveness research conducted under section 1320e of this title in determining coverage, reimbursement, or incentive programs under subchapter XVIII in a manner that precludes, or with the intent to discourage, an individual from choosing a health care treatment based on how the individual values the tradeoff between extending the length of their life and the risk of disability.

(2)(A)[1] Paragraph (1) shall not be construed to—

(i) limit the application of differential copayments under subchapter XVIII based on factors such as cost or type of service; or

(ii) prevent the Secretary from using evidence or findings from such comparative clinical effectiveness research in determining coverage, reimbursement, or incentive programs under such subchapter based upon a comparison of the difference in the effectiveness of alternative health care treatments in extending an individual's life due to that individual's age, disability, or terminal illness.

(3) Nothing in the provisions of, or amendments made by the Patient Protection and Affordable Care Act, shall be construed to limit comparative clinical effectiveness research or any other research, evaluation, or dissemination of information concerning the likelihood that a health care treatment will result in disability.

(e) The Patient-Centered Outcomes Research Institute established under section 1320e(b)(1) of this title shall not develop or employ a dollars-per-quality adjusted life year (or similar measure that discounts the value of a life because of an individual's disability) as a threshold to establish what type of health care is cost effective or recommended. The Secretary shall not utilize such an adjusted life year (or such a similar measure) as a threshold to determine coverage, reimbursement, or incentive programs under subchapter XVIII.

(Aug. 14, 1935, ch. 531, title XI, §1182, as added Pub. L. 111–148, title VI, §6301(c), Mar. 23, 2010, 124 Stat. 740.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsec. (d)(3), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of this title and Tables.

§ 1320e–2. Trust Fund transfers to Patient-Centered Outcomes Research Trust Fund

(a) In general

The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1395i of this title and the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title, in proportion (as estimated by the Secretary) to the total expenditures during such fiscal year that are made under subchapter XVIII from the respective trust fund, to the Patient-Centered Outcomes Research Trust Fund (referred to in this section as the ''PCORTF'') under section 9511 of the Internal Revenue Code of 1986, of the following:

(1) For fiscal year 2013, an amount equal to $1 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of subchapter XVIII during such fiscal year.

(2) For each of fiscal years 2014, 2015, 2016, 2017, 2018, and 2019, an amount equal to $2 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of subchapter XVIII during such fiscal year.

(b) Adjustments for increases in health care spending

In the case of any fiscal year beginning after September 30, 2014, the dollar amount in effect under subsection (a)(2) for such fiscal year shall be equal to the sum of such dollar amount for the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

(1) such dollar amount for the previous fiscal year, multiplied by

(2) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

(Aug. 14, 1935, ch. 531, title XI, §1183, as added Pub. L. 111–148, title VI, §6301(d), Mar. 23, 2010, 124 Stat. 741.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

§ 1320e–3. Information exchange with payroll data providers

(a) In general

The Commissioner of Social Security may enter into an information exchange with a payroll data provider for purposes of—

(1) efficiently administering—

(A) monthly insurance benefits under subsections (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), and (f)(1)(B)(ii) of section 402 of this title and subsection (a)(1) of section 423 of this title; and

(B) supplemental security income benefits under subchapter XVI; and

(2) preventing improper payments of such benefits without the need for verification by independent or collateral sources.

(b) Notification requirements

Before entering into an information exchange pursuant to subsection (a), the Commissioner shall publish in the Federal Register a notice describing the information exchange and the extent to which the information received through such exchange is—

(1) relevant and necessary to—

[1] So in original. No subpar. (B) has been enacted.

(A) accurately determine entitlement to, and the amount of, benefits described under subparagraph (A) of subsection (a)(1);

(B) accurately determine eligibility for, and the amount of, benefits described in subparagraph (B) of such subsection; and

(C) prevent improper payment of such benefits; and

(2) sufficiently accurate, up-to-date, and complete.

(c) Definitions

For purposes of this section:

(1) Payroll data provider

The term ''payroll data provider'' means payroll providers, wage verification companies, and other commercial or non-commercial entities that collect and maintain data regarding employment and wages, without regard to whether the entity provides such data for a fee or without cost.

(2) Information exchange

The term ''information exchange'' means the automated comparison of a system of records maintained by the Commissioner of Social Security with records maintained by a payroll data provider.

(Aug. 14, 1935, ch. 531, title XI, § 1184, as added Pub. L. 114–74, title VIII, § 824(a), Nov. 2, 2015, 129 Stat. 607.)

EFFECTIVE DATE

Section effective one year after Nov. 2, 2015, see section 824(e) of Pub. L. 114–74, set out as an Effective Date of 2015 Amendment note under section 425 of this title.

REGULATIONS

Pub. L. 114–74, title VIII, § 824(d), Nov. 2, 2015, 129 Stat. 610, provided that: ''Not later than 1 year after the date of the enactment of this Act [Nov. 2, 2015], the Commissioner of Social Security shall prescribe by regulation procedures for implementing the Commissioner's access to and use of information held by payroll providers, including—

''(1) guidelines for establishing and maintaining information exchanges with payroll providers, pursuant to section 1184 of the Social Security Act [42 U.S.C. 1320e–3];

''(2) beneficiary authorizations;

''(3) reduced wage reporting responsibilities for individuals who authorize the Commissioner to access information held by payroll data providers through an information exchange; and

''(4) procedures for notifying individuals in writing when they become subject to such reduced wage reporting requirements and when such reduced wage reporting requirements no longer apply to them.''

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation

(a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1322(b) of this title, in the manner provided in sections 1101(d)(1), 1103(b)(2), and 1322 of this title. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term ''compensation'' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the Government Accountability Office, transfer in monthly installments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

(Aug. 14, 1935, ch. 531, title XII, § 1201, as added Oct. 3, 1944, ch. 480, title IV, § 402, 58 Stat. 790; amended Aug. 6, 1947, ch. 510, § 5(b), 61 Stat. 794; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 404(a), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 3,